United Nations A/HRC/40/52/Add.1

General Assembly

Distr.: General
12 December 2018

Original: English

Human Rights Council
Fortieth session
25 February–22 March 2019
Agenda item 3
Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Visit to Tunisia

Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism*

Summary

In his former capacity as Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Ben Emmerson conducted a visit to Tunisia from 30 January to 3 February 2017 to assess the progress achieved by Tunisia in its law, policies and practice in the fight against terrorism, measured against its international human rights obligations. Despite many positive developments, the Special Rapporteur still has some concerns. In his report, he shares some observations and recommendations with regard to the abusive use of emergency legislation and powers vested in the police; the overbroad definition of terrorism in national legislation; prolonged periods of detention; the conditions of detention; the use of executive orders to restrict freedom of movement and impose house arrest without proper judicial review; allegations of ill-treatment and torture; and the use of counter-terrorism law and other legislation against journalists. With regard to the return of foreign terrorist fighters and their families, the Special Rapporteur reminds the Government that collective expulsions are strictly prohibited by international law and that it must respect the absolute prohibition against the violation of the non-refoulement principle under customary law. He recommends that the Government take appropriate measures to protect the rights of the children and families of foreign terrorist fighters returning to Tunisia in accordance with its obligations under international law, in particular international human rights law, humanitarian law and refugee law.

* The summary of the report is being circulated in all official languages. The report itself, which is annexed to the summary, is being circulated in the language of submission and Arabic only.

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Annex

Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism on his visit to Tunisia

I. Introduction

1. In his former capacity as Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Ben Emmerson conducted a visit to Tunisia from 30 January to 3 February 2017 at the invitation of the Government. The purpose of his visit was to assess the progress achieved by Tunisia in its law, policies and practice in the fight against terrorism, measured against its international human rights obligations, in particular with regard to the investigation, detention, arrest and trial of terrorist suspects, measures taken to prevent terrorism domestically and abroad, and the rights of victims of terrorism and persons negatively affected by counter-terrorism measures.

2. The Special Rapporteur thanks the Government of Tunisia for having extended an invitation to him to visit the country and commends the transparency and the constructive and cooperative way in which the Government facilitated his visit, which allowed a frank and open dialogue. Furthermore, the Special Rapporteur would like to thank the United Nations system in Tunisia, in particular the Office of the United Nations High Commissioner for Human Rights, the United Nations country team and the Resident Coordinator's office in Tunis for providing valuable support throughout his visit.

3. The Special Rapporteur is particularly grateful to the heads of all governmental institutions whom he met. He had valuable exchanges of information and views with the Minister of Justice, the Minister of Defence, the Minister for relations with constitutional bodies, the Secretary of State to the Minister of Foreign Affairs, the Senior Adviser to the President for counter-terrorism issues, prosecutors and investigative judges of the counter-terrorism judicial authority (pôle judiciaire de lutte contre le terrorisme), the Head of the Central Bank of Tunisia and the Tunisian Financial Analysis Committee, the national commission on counter-terrorism, the national commission for the prevention of torture and magistrates of the court of first instance of Tunis.

4. The Special Rapporteur also had discussions with law enforcement officials from the counter-terrorism unit of the judicial police, officials from the general directorate for international cooperation and senior management at the Ministry of the Interior, the Presidents of the High Committee on Human Rights and Fundamental Freedoms and the Truth and Dignity Commission and representatives of the Independent High Authority for Audiovisual Communication, the National Institution for the Protection of Personal Data and the National Union of Tunisian Journalists. He also met with lawyers, journalists and civil society organizations. The Special Rapporteur visited the Mornaguia prison and the Gorjani judicial police facility.

5. The Special Rapporteur shared his preliminary findings with the Government of Tunisia at the end of his visit, on 3 February 2017.

II. General context pertaining to human rights and counter-terrorism

6. Since 2014, Tunisia has lived under the threat of security attacks and suffered an increasing number of acts of terrorism. Initially attacks occurred in the mountainous regions bordering Algeria, where several law enforcement officials were assassinated by groups described as "terrorists". These security challenges culminated in 2015 with two deadly

terrorist attacks — at the Bardo Museum in Tunis in March and on a beach in Sousse in June — causing the death of over 60 civilians. Both attacks had devastating consequences on the Tunisian tourism industry, a major sector of the economy, and prompted the Government to adopt significant security measures. Another attack took place in Tunis in November 2015, when a bus carrying Tunisian presidential guards was attacked and exploded on one of the main avenues in Tunis. Since then, security incidents and terrorist attacks have mainly affected the border areas with Libya and the mountainous region bordering Algeria. One of the most deadly of these attacks took place in March 2016 in Ben Guardene, on the Libyan border, which killed 54 people. Against this backdrop, authorities have faced the challenge of having to respond to these threats and incidents in a way that conforms with the country's international human rights obligations.

7. Although the Government intensified its counter-terrorism efforts in 2016, terrorism remains a serious challenge. Currently, according to the authorities, there are four types of terrorist threats facing the country: the presence of armed groups in the mountains in the north; the presence of sleeper cells and support for active terrorist groups; trafficking in arms coming from Libya; and the issue of foreign terrorist fighters returning from conflict zones in Iraq, Libya and the Syrian Arab Republic. As of 2014, according to unofficial sources, up to 6,000 foreign fighters from Tunisia, mostly male but also including female jihadists, were estimated to have travelled to join various armed groups, usually Islamic State in Iraq and the Levant, in Iraq and the Syrian Arab Republic. By 2017, the number of such fighters was estimated to be about 3,000, a large number either having been killed in combat or having returned home. The socioeconomic conditions that laid the ground for the 2011 events of popular unrest and related change of regime have since further deteriorated owing to terrorist attacks and other insecurity factors. There has been a growing sense of frustration and social discontent, in particular in the south and south-west of the country, with calls for jobs, equal economic opportunities and transparent wealth distribution. Limited economic improvements and a high unemployment rate, particularly affecting youth, have made certain regions of Tunisia fertile ground for recruitment by radical groups.

III. Legal framework

A. International human rights obligations of Tunisia

8. Tunisia is a party to all the main international human rights treaties, including the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child, including some optional protocols to these treaties. It is also party to the Rome Statute of the International Criminal Court, the Convention on the Prevention and Punishment of the Crime of Genocide, the Geneva Conventions of 12 August 1949 and the protocols additional thereto, 63 International Labour Organization (ILO) conventions and 1 ILO protocol, including all 8 ILO fundamental conventions, the Convention against Discrimination in Education and the Convention relating to the Status of Refugees and its Protocol relating to the Status of Refugees.[1]

9. Tunisia has accepted most of the individual complaint procedures established under United Nations human rights treaties, including for the International Covenant on Civil and Political Rights, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of Persons with Disabilities and the Convention against Torture. Additionally, Tunisia has accepted the inquiry procedure under the

[1] For a full overview of the scope of the human rights treaty obligations of Tunisia, see document A/HRC/WG.6/27/TUN/2, annex. Available from www.ohchr.org/EN/HRBodies/UPR/Pages/TNIndex.aspx.

Convention on the Elimination of All Forms of Discrimination against Women, the Convention against Torture, the International Convention for the Protection of All Persons from Enforced Disappearance and the Convention on the Rights of Persons with Disabilities.

B. National legal framework

10. Following the popular uprising in Tunisia demanding social, economic, civil and political rights, which began on 17 December 2010 and culminated in the ousting of President Ben Ali on 14 January 2011, Tunisia entered a period of transition during which time it has become a beacon of hope in the region. Its commendable efforts in preventing violent extremism and countering terrorism should be grounded in human rights so that it could serve as a model in this area for the region and beyond.

11. Since the adoption of the new Constitution on 26 January 2014, Tunisia has held parliamentary elections, in October 2014, and presidential elections, in November and December of the same year. On 2 December, the first democratically elected parliament began implementing the new Government's ambitious plans by adopting laws to reform the legal and judicial system, as stipulated in the Constitution, including counter-terrorism legislation.

12. The preamble to the Constitution stipulates that the State is built on the principle of the separation of powers and a balance between them. It also declares that the State must guarantee the supremacy of the law, respect for freedoms and human rights, the independence of the judiciary and equality of rights and duties between all male and female citizens. Article 20 of the Constitution also affirms that the State's international obligations take precedence over domestic law.

13. Chapter V of the Constitution establishes the judicial power as one of the three branches of State. It includes important guarantees for the independence of judges, prosecutors and lawyers as the main actors of the judicial system. The Supreme Judicial Council, established by articles 112 to 114 of the Constitution, is responsible for the effective administration of justice and the independence of the judiciary. Article 113 affirms that the Supreme Judicial Council is self-managed and ensures the Council's administrative and financial independence: the Council is mandated to prepare its own draft budget and discuss it before the competent parliamentary committee. The Constitution also establishes the Constitutional Court as an independent judicial body that oversees the constitutionality of laws, besides performing other tasks specified by the Constitution.

14. Following a number of terrorist attacks, the President of Tunisia declared a state of emergency, in accordance with article 80 of the Constitution, which lasted from July 2015 until October 2015. A state of emergency was declared again in the aftermath of the November 2015 attack and has been extended several times ever since, most recently in November 2017 for three months. The Special Rapporteur expresses his concern about the legality and persistent extension by the President of the far-reaching emergency powers provided to law enforcement officials under Presidential Decree No. 78-50 of 26 January 1978 regulating a state of emergency.

15. On 7 August 2015, Tunisia reinforced its antiterrorism legislation with the promulgation of the Organic Law on the Fight against Terrorism and Money-laundering, which repealed and replaced the 2003 antiterrorism law. Since the 2011 political change, investigation and prosecution authorities had been reluctant to invoke the 2003 law, because many in Tunisian society believed that it had been one of the instruments of political repression of the previous regime. The 2015 Law promotes increased protection of human rights, including measures to strengthen attorney-client and doctor-patient privileges and the right of journalists to protect their sources (art. 37) and criminalizes unauthorized government surveillance (art. 64).

16. The 2015 Law provided for the creation of a new national commission on counter-terrorism and streamlined the handling of terrorism cases by referring them to the counter-terrorism judicial authority in Tunis — a unit of judges and members of the criminal

investigation department specialized in terrorism cases — rather than to judicial units at the governorate level. The 2015 Law includes all the offences addressed in the 19 international instruments on terrorism.[2] Despite the obvious improvements in the new Law, it still contains a number of flaws that are highlighted in the present report.

17. In November 2016, the President approved the National Strategy to Combat Terrorism and Violent Extremism. The strategy contains four pillars: prevention, protection, prosecution and response. The prevention pillar addresses the root causes of terrorism and violent extremism; legally prohibits incitement; stresses the role of education in promoting a culture of peace, dialogue, tolerance and respect for different cultures and beliefs; fosters the prevention of radicalization in prisons; promotes the protection of vital infrastructure; and organizes the exchange of information and coordination of activities. The protection pillar deals with issues related to combating terrorism; developing counter-terrorism protection plans; cooperation between intelligence agencies; organizing up-to-date information and communication systems; setting up border control mechanisms; and controlling the financing of terrorism. The prosecution pillar seeks to strengthen national capacities to fight terrorism through legal and judicial measures and by enhancing international legal cooperation. The response pillar provides for a globally and regionally aligned crisis response and management mechanism, which addresses victims of terrorism, the role of protected witnesses and the rights of detainees.

18. The Special Rapporteur commends the commitment expressed by all the official authorities and institutions to counter terrorism and prevent violent extremism not only through security measures but also through concerted action in the social, political, economic, judicial and human rights spheres. He has received assurances that the 2016 National Strategy to Combat Terrorism and Violent Extremism was drafted in this spirit and takes into account United Nations standards in this regard. The Special Rapporteur calls on the authorities to make the strategy public and to translate it into a concrete and well-coordinated national action plan for each ministry. It should prescribe the role of each governmental agency in contributing towards prevention, protection, prosecution and response through the application of a human-rights-centred approach and should set specific deadlines for action. The Special Rapporteur stands ready to provide technical or advisory assistance to the Government in this regard.

IV. Key human rights concerns

19. Despite many positive developments, challenges remain. The Special Rapporteur would like to share some observations, concerns and recommendations with regard to the abusive use of emergency legislation and powers vested in the police; the overbroad definition of terrorism in national legislation; prolonged periods of detention; the conditions of detention; the use of executive orders to restrict freedom of movement and impose house arrest without proper judicial review; allegations of ill-treatment and torture; and the use of counter-terrorism law and other legislative acts against journalists.

A. Definition of terrorism under the counter-terrorism legislation

20. The Special Rapporteur is concerned that the definition of terrorism contained in the 2015 Law is overly broad and fails to comply with international human rights standards of legal certainty. Even though the law includes a preamble explicitly emphasizing the importance of respect for constitutional rights and international conventions in the field of human rights and humanitarian law, the way it defines terrorism remains ambiguous. The law defines as a terrorist offence,[3] inter alia, the act of "causing harm to private and public property, vital resources, infrastructure, means of transport and communication, information technology systems or public services" when it is part of an individual or

[2] For a full list of the international legal instruments to prevent terrorist acts, see www.un.org/counterterrorism/ctitf/en/international-legal-instruments.

[3] The actus rei are listed in articles 14 to 36 of the 2015 Law.

collective enterprise aiming[4] at intentionally spreading terror among the population or forcing the Government or an international organization to take or refrain from taking action. Such a definition could allow the repression of certain non-violent acts that are not of a terrorist nature as defined by international law.

21. Furthermore, several provisions of the 2015 Law carry the risk of the gradual broadening of the definition of terrorism to acts that do not amount to, and do not have sufficient connection to, acts of serious violence or harm. Article 5 prohibits incitement to terrorism and article 31 prohibits the "praising and justification of terrorism" using a broad definition that fails to respect international law requirements regarding the right to freedom of expression. In accordance with the 2015 Law, any person who is found to have "publicly and clearly praised" a terrorist crime, the perpetrator of a terrorist crime or an organization or an alliance connected with terrorist crimes, their members or their activities, could be sentenced to up to five years in prison. Terrorism offences also include accusation of apostasy, including *takfeer* (calling another Muslim an unbeliever); promoting or inciting hatred or animosity between races, doctrines and religions; and promoting or praising terrorism, which is punishable by one to five years of imprisonment and a fine of 5,000 to 10,000 dinars. These articles pose a clear risk of unjustified restrictions on the freedom of expression of individuals and groups that legitimately and peacefully exercise their right to freedom of expression.

22. The Special Rapporteur considers that any definition of terrorism should be confined to acts or threats of lethal violence that are committed for political, religious, ideological or any other motives and that are aimed at spreading fear or terror among the public or parts of the public or to coerce a population, a government or an international organization to take or refrain from taking action. Contrary to the basic international human rights standards, the 2015 Law criminalizes a broad spectrum of acts of a non-violent nature, including the peaceful exercise of the rights to freedom of expression, assembly and association. The definition of terrorism may have a particularly negative impact on citizens in general, and civil society actors in particular, as simple demonstrations that may be accompanied by a certain amount of disorder could be criminalized as acts of terrorism. The implementation of the 2015 Law could thus result in excessive punishments being applied to people who are little more than peaceful protesters.

23. During his visit, the Special Rapporteur was informed that, since May 2015, 20 associations had been dissolved by judicial decision for having mishandled their funds or having links with terrorist acts, and 150 associations had been suspended by a secretary of State decision on similar grounds. In several cases, criminal prosecutions had been initiated against journalists and bloggers for reporting on terrorist attacks, which, despite the fact that the terrorist charges were eventually dropped, has fostered an atmosphere of fear among the media community in Tunisia. The denigration, in some media reports or by certain officials, of human rights non-governmental organizations and defenders following each terrorist attack, particularly during 2015, has contributed to a climate of fear and uncertainty and raises concerns about the State's implementation of its obligation to protect human rights defenders.

24. The Special Rapporteur recommends that the Government revise the definition of terrorism in the 2015 Law to bring it into line with the relevant provisions of Security Council resolutions 1373 (2001), 1456 (2003), 1566 (2004), 1624 (2005), 2178 (2014), 2341 (2017), 2354 (2017), 2368 (2017), 2395 (2017) and 2396 (2017); Human Rights Council resolution 35/34; and General Assembly resolutions 49/60, 51/210, 72/123 and 72/180. All these resolutions require that States ensure that any measures taken to combat terrorism and violent extremism, including incitement of and support for terrorist acts, comply with all of their obligations under international law, in particular international human rights law, refugee law and humanitarian law.

25. While there is no internationally agreed definition of terrorism, and States thus resort to establishing their own definitions, the Special Rapporteur stresses that Tunisia should ensure that national counter-terrorism legislation is limited to the countering of terrorism as

[4] The mens rea is defined in article 13 of the 2015 Law.

properly and precisely defined on the basis of the provisions of international counter-terrorism instruments and is strictly guided by the principles of legality, necessity and proportionality. The definition of terrorism in national legislation should be guided by the model definition proposed in Security Council resolution 1566 (2004) and also by the Declaration on Measures to Eliminate International Terrorism and the Declaration to Supplement the 1994 Declaration on Measures to Eliminate International Terrorism, which were approved by the General Assembly.[5] The seriousness of, and punishment for, a criminal conviction must be proportionate to the culpability of the perpetrator. No one should be convicted of participating in a terrorist act, or facilitating or funding terrorism, unless it can be shown that that person knew or intended to be involved in terrorism as defined under national law.

B. Lack of due process before the counter-terrorism judicial authority

26. During the visit, the Special Rapporteur was informed that investigations and prosecutions were ongoing against more than 1,500 individuals accused of terrorist acts. Less than 10 per cent of those accused had been sentenced, and the rest continued to be deprived of their liberty for prolonged periods without having been found guilty of any offence. The Special Rapporteur encourages the authorities to accelerate efforts to complete these judicial proceedings, including by providing the counter-terrorism judicial authority with adequate human resources and by simplifying and shortening the complex procedures of the criminal justice system.

1. Lengthy pretrial detentions and prolonged investigations

27. In December 2014, the counter-terrorism judicial authority was established to decrease the number of cases dealt with by the court of first instance in Tunis. The authority is composed of the public prosecutor, investigating judges, indictment chamber judges and judges of the criminal and correctional chambers of first instance and appeal. It is tasked with investigating terrorism-related cases and transferring them to the judicial chambers of the court of first instance for adjudication. The Special Rapporteur notes with concern that there are only eight investigating magistrates assigned to deal with more than 3,000 pending cases. It is estimated that over 1,500 detainees are being held under terrorism-related charges.

28. The 2015 Law permits courts to close the hearings to the public and to withhold information on victims, witnesses or any other relevant person on the ground of confidentiality, including from the defendants and their legal counsel. The law also extends the period of police custody pending issuance of a charge to 5 days, renewable twice for a total of 15 days (arts. 39 and 41). Act No. 2016-5 amending the Criminal Procedure Code entered into force in June 2016. It prescribes access to a lawyer for detainees in police custody and during the pretrial detention period. However, access to a lawyer can be delayed for up to 48 hours in terrorism cases.

29. This provision raises serious concerns about the fairness of the proceedings. These concerns were confirmed by reports received by the Special Rapporteur about trial proceedings conducted in camera and the reliance by certain judges on self-incriminating confessions made during police custody. The Special Rapporteur received credible allegations of torture and other ill-treatment, arbitrary arrest, violation of the right to be informed of the charge and of the right to legal counsel, lack of independent medical examinations and the admission of evidence obtained by torture in breach of the State's obligations under article 7 of the International Covenant on Civil and Political Rights and article 15 of the Convention against Torture.

[5] See General Assembly resolutions 49/60 and 51/210, which have been continuously recalled by the Assembly in its resolutions on measures to eliminate international terrorism, most recently in its resolution 72/123.

2. Inhumane prison conditions

30. The Special Rapporteur is particularly concerned about the prison conditions he witnessed in the Mornaguia Prison, which are far from meeting international minimum standards. The prison is approximately 150 per cent over capacity, with more than 90 prisoners crammed into dormitories with inadequate space, natural light, sleeping and sanitary facilities. These conditions systematically violate the rights of prisoners and place a considerable burden on staff. These conditions affect all categories of prisoners. However, they disproportionately affect those charged with terrorism because they are less likely to be granted provisional release than other suspected offenders as their cases may take years to come to trial and they receive the longest sentences.

31. The Special Rapporteur is also concerned about the measures taken within the prison system to reduce the risk of terrorist recruitment and radicalization of prisoners. While conscious of the risk involved in allowing the free movement of prisoners, measures that segregate individuals in solitary confinement for prolonged periods may raise issues of inhuman and degrading treatment.

3. Use of torture and ill-treatment, and impunity

32. During the visit, the Government informed the Special Rapporteur that there were strong legal safeguards in place against torture and ill-treatment, such as the right to file a complaint about torture and ill-treatment, the right to legal counsel and the right to contact a person of one's choice upon arrest. All detainees are afforded these rights under the Tunisian Code of Criminal Procedure. The Government admitted that there had been several cases of torture and ill-treatment but said that all cases were treated and investigated diligently.

33. The Special Rapporteur was informed that 230 cases of torture had been presented to national courts, after pretrial investigation, between July 2014 and January 2015. Of these, 165 were still in the investigation phase in April 2016. The perpetrators were convicted in only two cases and were given suspended sentences. While disciplinary sanctions have at times been imposed against perpetrators of torture during the past five years, only one case resulted in a firm criminal conviction and sentence to two years' imprisonment, under article 101 bis of the Criminal Code. The Special Rapporteur notes with concern that in 2015 around 200 torture complaints were lodged but that, as of September 2016, no judgments had been issued, a number of complaints had been dismissed and the majority were still pending.

34. During his meetings with the representatives of civil society organizations, the Special Rapporteur was informed of the growing number of allegations of torture and ill-treatment made by lawyers and human rights groups during court proceedings. He was also told of the frequent excessive use of force during the arrest of persons suspected of terrorism offences, excessively long periods of pretrial detention and lengthy periods of detention without charges. Law enforcement officials have been complaining that after they arrest suspects the judiciary often releases them due to a lack of sufficient evidence or because of a legal vacuum. In some cases, family members of suspects have been arrested. These persons, sometimes arrested in groups, have alleged that they were ill-treated during the arrest and interrogation. The Special Rapporteur has also received reports about the practice of incommunicado detention of suspects before their arrest has been officially registered and claims of torture during such detention.

35. Reportedly, torture and ill-treatment occur in the security sector, in particular when a person is held in the custody of the police and the National Guard on terrorism-related charges. Although the police are under the authority of the public prosecutor during investigations, the Committee against Torture noted in its recommendations to Tunisia in May 2016 that the public prosecutor was not practically involved in monitoring interrogation but rather exercised judicial oversight over the measures taken by the police (CAT/C/TUN/CO/3, para. 15). The Committee also highlighted reports that the Ministry of the Interior had sometimes misinterpreted the counter-terrorism law by refusing to reveal the identity of officers suspected of torture to the judge in charge of the investigation.

36. The Special Rapporteur is concerned that impunity for acts of torture and ill-treatment remains widespread. He echoes the Committee against Torture, which expressed its concerns that, while torture was recognized as a crime in the Tunisian Criminal Code in article 101 bis, the definition of torture was not in conformity with the definition set out in article 1 of the Convention against Torture (ibid., para. 7). In particular it did not refer to punishment as one of the prohibited purposes of torture and limits "discrimination" to "racial discrimination". The Committee against Torture also noted with concern that article 101 quater provided for the exemption from punishment of public servants or their equivalents who denounced acts of torture "in good faith", which opened the door to impunity.

37. The Special Rapporteur is also concerned about consistent reports of a lack of due diligence by judges and judicial police when investigating allegations of torture or ill-treatment. These officials, who report to the Ministry of the Interior, are responsible for investigating cases of violence committed by State officials. The prosecutors receiving complaints of torture sometimes decide to conduct preliminary inquiries instead of sending the case to an investigating judge, thus preventing the victim from filing a criminal complaint and seeking damages.

38. The Special Rapporteur calls for increased vigilance by all authorities involved in implementing the Government's commitment to eradicate ill-treatment and torture. While commending the Government for its progress in this area, he expresses concern over the fact that allegations of torture or other forms of ill-treatment made by persons suspected or accused of acts of terrorism, their lawyers and human rights defenders do not systematically result in rapid and thorough independent investigations. He recommends, as an immediate step, the introduction of a legal and procedural reform to guarantee access to and the effective presence of a defence lawyer for those accused immediately upon their arrest and not 48 hours later, as is currently the case. He also recommends the installation of video cameras in all places where persons suspected of terrorism are detained and interrogated.

39. The Special Rapporteur welcomes the creation and election of the members of the national commission for the prevention of torture in March 2016. He urges the Government to ensure that this institution aimed at preventing torture is sufficiently funded through the State budget to ensure its effective and unimpeded operational capacity throughout the territory of the country and that its institutional independence is rigorously respected.

C. Abusive use of emergency powers in violation of international law

40. The Special Rapporteur is gravely concerned about the routine extension of states of emergency in Tunisia since July 2015 despite the decrease in the number of terrorist attacks in the country. According to the Ministry of the Interior, since the state of emergency was introduced, up to the time of the visit, security forces had conducted more than 500 house raids and had prevented at least 19,000 individuals from travelling to conflict zones in Iraq, Libya, the Syrian Arab Republic or elsewhere. Most of the restrictive measures described in the following paragraphs were ordered and implemented in the absence of judicial oversight. They resulted from secret administrative orders of the Ministry of the Interior. The Special Rapporteur is concerned that the lack of judicial oversight over these decisions denies those subjected to them the right to appeal the legality, necessity and proportionality of the measures imposed on them. The Special Rapporteur regrets that, despite his appeal to the Government at the end of his visit, this abusive practice continues.

1. Abusive imposition of house arrest

41. According to the Government, since the declaration of the state of emergency in July 2015 about 150 individuals have been placed under house arrest. This measure appears to be taken without any legal basis in the 2015 Law. The persons targeted were all considered high risk security detainees. No arrest warrants were issued by competent courts. The arrests followed secret administrative orders by the Ministry of the Interior.

42. Presidential Decree No. 78-50 of 26 January 1978 regulating a state of emergency empowers the Ministry of the Interior to place an individual considered to be a security

threat under house arrest or to confine him or her to a specific area and to exercise control over the execution of such orders (art. 5). House arrest orders appear to be issued for an unlimited duration and require the individual subjected to them to report twice a day to, and to sign in at, the local police station.

43. The Special Rapporteur urges the Government to fulfil its obligation under article 9 of the International Covenant on Civil and Political Rights to protect all individuals from arbitrary deprivation of liberty. According to the Human Rights Committee's general comment No. 35 (2014) on liberty and security of person, deprivation of liberty may take different forms, including house arrest. Hence, it can be imposed only by a judicial decision and is subject to appeal, in accordance with article 9 of the Covenant. The Committee's general comment No. 29 (2001) on derogations from provisions of the Covenant during a state of emergency clarifies that the right to take proceedings before a court is non-derogable and must be ensured at all times, even during a state of emergency.

2. Restrictions on freedom of movement and the right to travel abroad

44. With regard to restrictions on freedom of movement, the Ministry of the Interior has reportedly issued what are referred to as secret "S10 orders" under which individuals are normally confined to their city or town. Those placed under house arrest and S10 orders are notified of the restriction verbally by police and are not presented with a written document, the justification for and specific details of which could be questioned, challenged or appealed. The Special Rapporteur urges the Government to discontinue this practice as it is contrary to article 12 of the International Covenant on Civil and Political Rights.

45. Restrictions on the right to leave the country have also been imposed on people suspected of travelling to foreign countries as foreign fighters or to engage in terrorist activities. These restrictions appear to have no basis in the 2015 Law. Suspects have been systematically banned from leaving the country. There is no judicial order for or judicial oversight of the travel ban and those subjected to it do not receive any written order or explanation. This type of restriction on individuals' freedom of movement, preventing them from travelling abroad, similarly stems from secret administrative orders by the Ministry of the Interior, referred to as "S17 orders". The suspects are notified of the ban but do not receive any official document explaining its legal basis, thus preventing any possibility of challenging the restriction.

46. The Special Rapporteur reminds the Government of its obligation to ensure freedom of movement and the right to travel abroad under article 12 of the Covenant. Even if this right is restricted by an executive or law enforcement decision it must be legal, reasoned, justified and subject to judicial oversight and appeal.

3. House searches and surveillance

47. According to information received by the Special Rapporteur, persons suspected of terrorist activities or of being connected with individuals suspected of terrorist activities are often subjected to frequent house searches and to constant surveillance by the law enforcement authorities. These surveillance and search measures do not seem to be authorized by courts or submitted to judicial oversight. House searches are conducted without warrants and involve not only the houses of suspected individuals but also those of their relatives and of any individuals they are suspected to be in contact with. House searches are often conducted late at night, and it is often alleged that excessive force is used against suspects and their families. Presidential Decree No. 78-50 empowers the Ministry of the Interior to order searches both during the day and night (art. 8). In this regard, the Special Rapporteur would like to bring to the attention of the Government its obligation to respect the right to privacy and the inviolability of the home provided by article 17 of the Covenant.

4. Abusive use of emergency powers

48. The Special Rapporteur expresses his grave concern that the abusive use of the emergency powers granted in Presidential Decree No. 78-50 to law enforcement institutions impinges substantially on the full enjoyment of international human rights norms, including

those accepted by Tunisia, in particular the right to freedom of movement, the right to leave one's country and the right to privacy, and also the non-derogable right to challenge such restrictions in court, the prohibition against arbitrary deprivation of liberty and due process guarantees.[6] According to the information received from the United Nations depository, the Government of Tunisia has never submitted its notification of derogation from the corresponding provisions of the Covenant, which is a clear breach of the State's international obligations.[7]

49. The routine extension of the state of emergency with overreaching executive and law enforcement powers that infringe upon the full enjoyment of human rights and fundamental freedoms amounts to a permanent state of emergency, which is prohibited under international law. The routine extension of the state of emergency in the absence of a notification of derogation, detailing the rationale for the derogations, violates article 4 of the International Covenant on Civil and Political Rights. The Special Rapporteur urges Tunisia to undertake immediate measures to discontinue this abusive practice and repeal and replace current emergency legislation in line with its obligations under the article 4 of the Covenant.

D. Handling of foreign terrorist fighters and their families

50. Reports suggest that Tunisia is the biggest "country exporter" of foreign terrorist fighters to conflict zones in the region, in particular in the Syrian Arab Republic. The Government informed the Special Rapporteur that there were no official statistics on Tunisian nationals serving as foreign terrorist fighters in conflicts. However, some 5,000 to 7,000 Tunisian fighters are said to have joined groups of Islamic State in Iraq and the Levant in Iraq, Libya and the Syrian Arab Republic, although many of those fighters have been killed, and hundreds are estimated to have returned to Tunisia.

51. Some of the most recent figures shared by the Government date back to January 2015, when it was estimated that the total number of Tunisians who had fought in the Syrian Arab Republic as foreign terrorists was 2,800, including 600 killed and 568 returnees to Tunisia. Almost 90 per cent of these combatants joined Islamic State in Iraq and the Levant. The Ministry of the Interior informed the Special Rapporteur that it had detailed information about returnees and that among the measures taken against them were imprisonment, restriction of movement and tight security surveillance. The Special Rapporteur has observed a growing public sentiment against the return of these foreign terrorist fighters, regarded as a potential source of further violence in Tunisia and as a threat to national and regional security. According to some governmental officials, the return of foreign terrorist fighters and their interaction with sleeper cells may result in the formation of an armed organization against the State.

52. The Special Rapporteur is fully cognizant of the threat of further terrorist and other violent attacks posed by the return of foreign terrorist fighters and the violent radicalization of individuals on the fringe of society. The return home of individuals who may have committed all sorts of crimes, including terrorism, with an experience of warfare and combat, is no doubt an issue of utmost concern that any Government concerned with the protection of its population must take very seriously indeed. He must, however, remind the Government of its obligations under article 17 of the International Covenant on Civil and Political Rights, which states that everyone has the right to enter and leave one's own country. A delicate balance must thus be struck between countering terrorism and ensuring security in society, on the one hand, and ensuring the respect of human rights, on the other. In this regard, the Special Rapporteur advises the Government that any limitation of rights must be lawful, pursuant to a legitimate aim and necessary to achieve that aim. Collective expulsions are strictly prohibited by international law. States may only expel a person who is unlawfully on the territory or whose legality of entry or stay is disputed, pursuant to a decision reached in accordance with the law. If the Government is seeking to prevent

[6] Human Rights Committee, general comment No. 29, para. 16.

[7] International Covenant on Civil and Political Rights, art. 4, and general comment No. 29.

individuals from entering, or to remove individuals from, its territory, it must respect the absolute prohibition against the violation of the non-refoulement principle under customary and international human rights law, notably under the Convention against Torture or, insofar as such individuals are protected under the Convention relating to the Status of Refugees, must not place them at risk of persecution on the grounds identified in that Convention.

53. The Special Rapporteur recommends that the Government take appropriate measures to protect the rights of the children and families of the foreign terrorist fighters returning to Tunisia in accordance with its obligations under international law, in particular international human rights law, humanitarian law and refugee law.

V. Conclusions and recommendations

54. The Special Rapporteur commends the commitment and efforts of the Government of Tunisia to promote and protect human rights and fundamental freedoms while countering terrorism. Since 2014, Tunisia has suffered an increasing number of acts of terrorism and has lived under the threat of further attacks. As a party to almost all the main international human rights treaties, Tunisia has endeavoured to respect and to ensure to all individuals within its territory and subject to its jurisdiction all the rights related to, inter alia, the proper administration of justice, including the principle of equality before the law; the right to an effective remedy; the right to liberty and security; the presumption of innocence; the right to a fair and public hearing without undue delay by a competent, independent and impartial tribunal established by law; the fundamental procedural guarantees of persons charged with a criminal offence; and the principle of legality; as well as the fundamental freedoms of opinion and expression, religion or belief and peaceful assembly and association.

55. The Special Rapporteur welcomes the fact that the Government has undertaken the necessary reform of its counter-terrorism legislation by adopting the 2015 Organic Law on the Fight against Terrorism and Money-laundering and the 2016 National Strategy to Combat Terrorism and Violent Extremism. Its commendable efforts in preventing violent extremism and countering terrorism should, however, be more firmly grounded in human rights so that its could serve as a model in this area for the region and beyond.

56. The Special Rapporteur welcomes the creation of the national commission on counter-terrorism, the counter-terrorism judicial authority and the national commission for the prevention of torture. However, he notes with concern that the specialized judicial authority is underresourced and unable to effectively and efficiently deal with the growing workload, resulting in the prolonged deprivation of liberty of hundreds of individuals.

57. Along with these positive developments, the Special Rapporteur observed a number of serious issues with regard to the abusive use of emergency legislation and powers vested in the police, the overbroad definition of terrorism in national legislation, prolonged periods of detention, the conditions of detention, the use of executive orders to restrict freedom of movement and impose house arrest without proper judicial review, allegations of ill-treatment and torture and the use of counter-terrorism law and other legislative acts against journalists.

58. Specifically, the Special Rapporteur recommends that the Government and other relevant State institutions of Tunisia:

(a) Urgently review the definition of terrorism in the 2015 counter-terrorism law and bring it into line with the relevant provisions of United Nations Security Council resolutions 1373 (2001), 1456 (2003), 1566 (2004), 1624 (2005), 2178 (2014), 2341 (2017), 2354 (2017), 2368 (2017), 2395 (2017) and 2396 (2017); General Assembly resolutions 49/60, 51/210, 72/123 and 72/180; and Human Rights Council resolution 35/34. This should ensure that the law's definition is as narrow as possible and serves

as a basis to ensure that any measures taken to combat terrorism and violent extremism, including incitement of and support for terrorist acts, comply with all of the Government's obligations under international law, in particular international human rights law, refugee law and humanitarian law;

(b) Given the alleged use of torture under the counter-terrorism framework, the judiciary must ensure that coerced self-incriminating confessions, or confessions incriminating others, are inadmissible as evidence in court. The relevant authorities should also ensure that judges are aware of their obligation to listen to and promptly and thoroughly investigate any credible allegation by a defendant, his or her lawyer or his or her family, that he or she was subjected to torture or ill-treatment by investigators during interrogation for the purpose of obtaining self-incriminating confessions or information implicating others. Furthermore, they should ensure that Judges investigating such allegations are effectively protected against pressure, intimidation or any form of reprisal.

59. **As preventive measures against torture and ill-treatment of persons in law enforcement custody, the Special Rapporteur recommends that the Government:**

(a) Adopt legal and procedural reforms to guarantee the presence of defence lawyers immediately upon arrest, instead of only after 48 hours, and throughout the interrogation and investigation process;

(b) Install video cameras in detention and interrogation facilities;

(c) Ensure that defendants and other citizens bringing complaints of torture or ill-treatment are not subject to reprisals and that they receive adequate compensation if the allegation of torture is established;

(d) Ensure the availability of prompt, independent, adequate and consensual medical examinations at the time of arrest and at regular intervals thereafter. Medical examinations must also be provided as soon as a detainee enters a custodial or interview facility and upon each transfer;

(e) Ensure that the newly created national commission for the prevention of torture is fully and adequately funded through the State budget in order to ensure its effective and unimpeded operational capacity throughout the entire territory of the country;

(f) Ensure the complete operational independence of the national preventive mechanism under the Optional Protocol to the Convention against Torture;

(g) Introduce specific compulsory training programmes for law enforcement officials, investigators, prosecutors, judges and medical personnel, based on upon the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol).

60. **The Special Rapporteur also recommends that the Government:**

(a) Take immediate measures to discontinue the abusive, and internationally illegal, practice of routinely extending the extraordinary powers conferred to law enforcement institutions under the state of emergency, which de facto normalizes what should be an extraordinary legal regime;

(b) Repeal and replace its current emergency legislation in line with its obligations under article 4 of the International Covenant on Civil and Political Rights. The Government should repeal and replace Presidential Decree No. 78-50, which allows for the abusive use of emergency powers by the law enforcement authorities;

(c) Take immediate measures to ensure full respect for the law during the state of emergency and the full enjoyment by individuals of their non-derogable rights, including the right to access to courts and due process. The abusive use of house arrest, restrictions on freedom of movement and violations of privacy rights must stop;

(d) **Take appropriate measures in handling the departure and return of foreign terrorist fighters with a view to ensuring full respect of article 17 of the International Covenant on Civil and Political Rights on freedom of movement, while ensuring that any restrictions on the exercise of that right is lawful, pursuant to a legitimate aim and necessary to achieve that aim. The rights of the children and families of the foreign terrorist fighters returning to Tunisia should also be protected in accordance with the State's obligations under international law, in particular international human rights law, humanitarian law and refugee law.**

United Nations A/HRC/40/52/Add.2

General Assembly

Distr.: General
13 December 2018

Original: English

Human Rights Council
Fortieth session
25 February–22 March 2019
Agenda item 3
Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Visit to Saudi Arabia

Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism*

Summary

In his former capacity as Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Ben Emmerson conducted an official visit to Saudi Arabia, from 30 April to 4 May 2017, to assess the progress that had been achieved by Saudi Arabia in its law, policies and practice in the fight against terrorism, measured against international human rights law and standards. The Special Rapporteur commends, in particular, the efforts of the Government to alleviate the suffering of the victims of terrorism through comprehensive programmes involving financial, psychological, educational and moral support, and career opportunities.

Despite some positive observations, in his report, the Special Rapporteur shares several key human rights concerns and recommendations with regard to existing abusive counter-terrorism and security-related legislation to stifle dissent, the overbroad definition of terrorism that often serves as a basis for prosecuting individuals engaged in non-violent expression and advocacy, especially in defence of human rights and journalists, as well as the pattern of systematic repression in the country's Eastern Province, where the majority of the Shia population resides.

Furthermore, the Special Rapporteur expresses his concerns about the large number of reports regarding unfair trials before the Specialized Criminal Court, prolonged periods of detention, the use of torture, coerced confessions and the lack of accountability, as well as the failure of Saudi Arabia to provide minimum procedural safeguards during detention and interrogation, and its judicial practice of admitting coerced confessions into evidence, which, in his view, amounts to a systematic and flagrant denial of justice.

With regard to the use of the death penalty following manifestly unfair trials, the Special Rapporteur stresses that its imposition — particularly in the barbaric and public

* The summary of the report is being circulated in all official languages. The report itself, which is annexed to the summary, is being circulated in the language of submission and Arabic only.

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way in which it is used in Saudi Arabia — is incompatible with the fundamental tenets of human rights law. He considers that the use of the death penalty by Saudi Arabia is archaic, and inhuman and degrading, not only for the person who is executed but for all those who contribute to it and who take part as spectators. It demeans and degrades the people of Saudi Arabia as a whole.

At the end of the report, the Special Rapporteur makes a number of recommendations to Saudi Arabia, including on its extraterritorial counter-terrorism engagements in Yemen and the Syrian Arab Republic.

Annex

Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism on his visit to Saudi Arabia

I. Introduction

1. In his former capacity as the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Ben Emmerson conducted an official visit to Saudi Arabia, from 30 April to 4 May 2017, at the invitation of the Government, to assess the progress that had been achieved by Saudi Arabia in its law, policies and practice in the fight against terrorism, measured against international human rights law and standards.

2. The Special Rapporteur thanks the Government of Saudi Arabia for having extended an invitation to visit the country and he commends the transparency and the courteous, constructive and cooperative way in which the Government initiated and facilitated the visit, as well as his previous working-level visit in November 2016, both of which allowed a frank and open dialogue on most issues of concern. He also thanks the office of the United Nations country team in Saudi Arabia for providing valuable support throughout the visit.

3. The Special Rapporteur thanks the heads of all the governmental institutions that he met. He had the opportunity to hold exchanges of views about the Government's efforts to combat terrorism with the Minister of Justice, the President of the Bureau of Investigation and Public Prosecution, the General Director of the General Directorate of Investigation of the Ministry of the Interior, the President of the Specialized Criminal Court, the Chair of the National Society for Human Rights and the President of the Saudi Human Rights Commission.

4. The Special Rapporteur also had discussions with the Chief of the police station in Al Manar, and the Directors and personnel of Al Hair and Dhahban prisons and the Mohammed bin Naif Counselling and Care Centre. The Special Rapporteur's team conducted interviews with individuals accused and convicted of terrorist crimes and met, although not privately, with representatives of families of victims of terrorist violence.

5. The Special Rapporteur shared his preliminary findings with the Government at the end of his visit, on 4 May 2017.

II. Terrorist attacks against Saudi Arabia

6. The Special Rapporteur was informed by the Government that during the past three decades, Saudi Arabia had suffered a large number of terrorist attacks by Al-Qaida — and lately by Islamic State in Iraq and the Levant and other groups — against military and civilian targets. According to official records, altogether 1,075 terrorist plots have been identified in the country since 1987. The Special Rapporteur was informed that 844 of these had been effective, many with devastating consequences, and that 231 plots had been disrupted. A total of 3,178 individuals had been killed or injured as victims of terrorism over this period. The Special Rapporteur was not in a position to verify those figures. Since 2011, the Government has also been facing protests in the key strategic Eastern Province, which is home for the country's main oil production and in which the majority of the country's Shia population lives. Inspired by the Arab Spring, and facing ongoing repression, the Shia minority has started calling for reform.

III. Elements of the legal framework

A. International framework

7. Saudi Arabia is a party to some of the main international human rights conventions, including the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Convention on the Elimination of Racial Discrimination and the Convention on the Rights of the Child, as well as some optional protocols.[1] It is not party to either the International Covenant on Civil and Political Rights or to the International Covenant on Economic, Social and Cultural Rights. It is bound, however, by the relevant rules of international human rights law, which include the absolute prohibition of torture, the prohibition of the arbitrary deprivation of the right to life and of the prohibition of arbitrary deprivation of liberty, the fundamental principles of fair trial and due process, including the presumption of innocence and the principle of non-discrimination. These rights form part of customary international law. They are proclaimed in the Universal Declaration of Human Rights and are norms of *jus cogens* (peremptory norms of international law) from which no derogations are permissible.

8. Both international humanitarian law[2] and international human rights law apply to the recent extraterritorial operations of Saudi Arabia in the Syrian Arab Republic and Yemen. International humanitarian law does not replace international human rights law in situations of armed conflict. Both regimes remain in force and are complementary.[3]

B. National framework

9. Saudi Arabia is an Islamic State. It is a theocracy, whereby all source of authority derives from God. Its judicial system is based on Islamic law (sharia) for both criminal and civil cases. At the top of the legal system is the King, who acts as the final court of appeal and as a source of pardon. The court system consists of three divisions. The sharia courts hear most cases, in three jurisdictions: the Court of First Instance, the Court of Cassation and the Supreme Judicial Council. In addition to the regular sharia courts, the Board of Grievances hears cases that involve the Government. The court system is supplemented by various quasi-judicial committees within government ministries that address specific disputes, such as labour issues. In April 2005, a reorganization of the judicial system began, which was approved by royal order on 1 October 2007. Changes included the establishment of a new Supreme Court and special commercial, labour and administrative courts.

10. The Basic Law of Governance provides that "the Kingdom of Saudi Arabia is a sovereign Arab Islamic State. Its religion is Islam. Its constitution is God's Almighty Book, the Holy Qur'an, and the Sunna of the Prophet".[4] Accordingly, the sharia provides the basis of governance and characterizes the State as well as its relationship with its citizens. While the Kingdom has ratified several core human rights treaties, is a current member of the Human Rights Council and has a substantial Human Rights Department within the Ministry of Islamic Affairs, it often puts forward the sharia, or divine law, its culture and the Islamic character of the State as impediments to full implementation of international human rights standards.

11. Government sources placed emphasis on the commitment of Saudi Arabia to international cooperation and mutual legal assistance in countering terrorism, and its efforts to stem the flow of terrorist financing. The extent to which such legislation is effectively implemented is open to question. The Special Rapporteur commends the efforts of the Government to alleviate the suffering of the victims of terrorism through comprehensive

[1] See A/HRC/WG.6/17/SAU/2.

[2] Saudi Arabia is a party to the Geneva Conventions relating to the protection of victims of international armed conflicts and Additional Protocols I and II.

[3] *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996*, p. 226.

[4] Royal Decree No. A/90 of 1 March 1992.

programmes involving financial, psychological, educational and moral support, and career opportunities. Financial, housing and psychosocial support for the victims of terrorism and their families is an essential part of an integrated counter-terrorism strategy.[5]

12. The country's first piece of counter-terrorism legislation, the Penal Law for Crimes of Terrorism and its Financing, was approved by the King in December 2013 and entered into force on 1 February 2014.[6] Regulations of the Ministry of the Interior issued on 7 March 2014 extended the counter-terrorism law's definition of terrorism by adding to the list of acts classed as terrorism. On 31 October 2017, the Council of Ministers adopted the Law on Combating Crimes of Terrorism and its Financing, which replaced the 2014 framework. This new law transfers extensive powers from the Ministry of the Interior (which was reorganized in 2017) to the newly established Public Prosecution and the Presidency of State Security,[7] both of which report directly to the King.

13. The Specialized Criminal Court was created in the General Court in Riyadh, in 2008, to prosecute individuals accused of terrorism. Many were held in detention for alleged involvement in Al-Qaida attacks in the Kingdom, which began in 2003. By July 2007, about 9,000 suspects had been detained, according to official figures. Many went through the "de-radicalization" programme established in 2004.[8]

IV. Key human rights concerns

A. Definition of terrorism under counter-terrorism legislation

14. The Penal Law for Crimes of Terrorism and its Financing of 2014 included a very broad definition of terrorist crimes, which encompassed any act directly or indirectly intended to disturb the public order of the State, destabilize national security or the stability of the State, endanger national unity, suspend the Basic Law of Governance or some of its articles, undermine the reputation of the State or its standing, or cause damage to one of its public utilities or natural resources.[9] Anyone, whether Saudi Arabian or a foreign national, whether inside the country or abroad, who was accused of such conduct could be prosecuted as a "terrorist" inside Saudi Arabia. This included those who attempted to change the government system in the Kingdom or harmed its interests, economy or national or societal security.[10] Under such a broad definition, anyone challenging the authority or policies of the State could qualify as a terrorist.

15. The regulations of the Ministry of the Interior, issued on 7 March 2014, extended the counter-terrorism law's already overly broad definition of terrorism to include such acts as calling for atheist thought in any form, or calling into question the fundamentals of the Islamic religion on which the country is based.[11] The definition also included anyone who had contact or correspondence with any groups, currents of thought or individuals hostile to the Kingdom;[12] anyone seeking to shake the social fabric or national cohesion, or calling, participating, promoting or inciting sit-ins, protests, meetings or group statements in any form; and anyone who harmed the unity or stability of the Kingdom by any means.[13] The Ministry's guidance states that terrorism is committed by anyone attending conferences,

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[5] See A/HRC/20/14.

[6] Royal Decree No. M/16 of 27 December 2013.

[7] The Presidency of State Security was established by royal decree in July 2017 to coordinate all Saudi security institutions, including counterterrorism and domestic intelligence services, placing them under the direct authority of the King (who also acts as Prime Minister) and sidestepping the Ministry of the Interior. *Saudi Gazette*, "Saudi Arabia creates new security authority", 20 July 2017.

[8] Lori Plotkin Boghardt, "From ISIS to activists: new security trials in Saudi Arabia", Washington Institute for Near East Policy, *Research Notes*, No. 33, May 2016.

[9] Art. 1.

[10] Art. 3.

[11] Art. 1.

[12] Art. 6.

[13] Art. 8.

seminars, or meetings inside or outside the Kingdom targeting the security of society, or sowing discord in society,[14] as well as those inciting or making countries, committees, or international organizations antagonistic towards the Kingdom.[15]

16. The Committee against Torture has expressed concern that the 2014 Law criminalizes any peaceful expression of opinion or belief deemed to endanger national unity or undermine the reputation or position of the State.[16] The Working Group on Arbitrary Detention has referred to the grave and systematic violations of the norms related to the right to a fair trial, including the obligation of the Government to define criminal offences precisely within the law.[17]

17. The Special Rapporteur concurs with this assessment, and considers that the definition of terrorism in the Penal Law for Crimes of Terrorism and its Financing is objectionably broad and fails to comply with international human rights standards. The concept of terrorism should be confined to acts or threats of violence committed for political, ideological, religious or other motives, aimed at spreading fear among the population, or sections of it, in order to coerce a government or international organization to take or refrain from taking any action. Contrary to basic international human rights standards, articles 1 and 3 of the 2014 Law criminalize a wide spectrum of acts of peaceful expression, opinion, assembly and association, as well as freedom of thought and religion. This has a seriously restrictive impact on civil society as almost any non-governmental political action can be criminalized as an act of terrorism. The 2014 Law can also be used to request the extradition of peaceful political opponents and human rights defenders who have sought refuge abroad.

18. The Law of 31 October 2017 introduced a new article 30, which extended the definition of terrorism to those who described the King or Crown Prince in any way offensive to religion or justice.

19. As the definition of terrorism can include peaceful advocacy for political or policy reform, or criticism of the King, the expression of peaceful dissent can be prosecuted as terrorism under this provision. Intellectual and academic freedom is also ruthlessly suppressed. The misuse of academic or social status or media influence is listed as an aggravating factor for the purposes of sentencing and attracts a minimum of 15 years of imprisonment for the most trivial of infractions. Article 44 embodies a direct attack on freedom of expression. It provides that anyone who broadcasts or publishes by any means news, statements, false or malicious propaganda, or the like, for the purpose of carrying out a terrorist offence shall be punished by imprisonment for a term of between one and five years.

20. At the end of his country visit, the Special Rapporteur recommended that the Government must urgently review the definition of terrorism in the 2014 Law and bring it into line with international human rights norms, and to refrain from using antiterrorism and other forms of national security legislation to stifle peaceful political dissidence, criticism or non-violent protest. Far from bringing the definition into line with international standards, Saudi Arabia has enlarged the operation of the law to implement an even more repressive crackdown on the exercise of internationally protected civil and political rights. Saudi Arabia has similarly ignored the recommendation of the Committee against Torture to consider revising the definition of terrorism in the Penal Law for Crimes of Terrorism and its Financing so that its criminalization provisions are as narrow as possible and cannot serve as a basis for prosecuting individuals engaged in non-violent expression and advocacy, especially in defence of human rights.[18]

[14] Art. 9.
[15] Art. 11.
[16] CAT/C/SAU/CO/2, para. 16.
[17] A/HRC/WGAD/2015/38, para. 74.
[18] CAT/C/SAU/CO/2, para. 18.

B. Use of counter-terrorism and State security-related legislation to stifle dissent

21. Having received numerous reports about persecution of dissidents based on the 2014 Law, the Special Rapporteur notes with grave concern that the first individual convicted under the 2014 Law before the Specialized Criminal Court was Waleed bin Sami Abu al-Khair, a human rights lawyer and the head of an independent human rights organization founded in 2008 (Monitor of Human Rights in Saudi Arabia).[19]

22. Many prominent human rights defenders, religious figures, writers, journalists, academics and civic activists were the subjects of communications from the special procedure mandate holders.[20] These included the 11 founders of the Saudi Civil and Political Rights Association. In its responses, the Government stated that those persons were arrested and detained for offences related to terrorism and State security. The Government's classification of their alleged offences are indicative of the types of activity that are prosecuted as terrorism in Saudi Arabia. They included the "crimes" of misleading public opinion and tarnishing the country's reputation; defaming the loyalty and faith of the members of the Council of Senior Scholars; disparaging and insulting the judiciary; contesting the independence of the judiciary; disrespecting the legal profession; and disseminating statements and booklets containing false, uncorroborated and unauthenticated information with a view to damaging the reputation of the Kingdom. These offences are laid down in national legislation, including the Basic Law of Governance, the 2014 Law and the Law on Associations and Foundations (Royal Decree No. M/8 of 1 December 2015). In its responses, the Government insisted that those prosecutions were compatible with international norms and standards, in particular with articles 19, 20 and 29 (2) of the Universal Declaration of Human Rights. The Special Rapporteur cannot agree with that conclusion.

23. The Special Rapporteur underscores that, according to article 29 (2) of the Universal Declaration of Human Rights, no restrictions may be placed on the exercise of the rights and freedoms laid down in the Declaration other than those that are determined by law, and that are objectively necessary to guarantee the respect for the rights and freedoms of others and to meet just requirements of morality, public order and the general welfare in a pluralistic and democratic society. States have a positive obligation to foster and ensure the existence of an enabling environment[21] for citizens to exercise peacefully their rights to freedom of expression, assembly and association. Those with beliefs that are unpopular with the State, nonetheless, have the right to communicate information and opinions, and to participate and contribute to the building of a just society, freely and without fear.

24. Despite repeated requests by the Special Rapporteur, the Government did not give access to any of the individuals currently in detention for offences related to the exercise of the right to free speech. He provided the relevant authorities with a list of names of those he wished to interview confidentially. These included a number of individuals whose cases had been reviewed by the Working Group on Arbitrary Detention in 2015, which found their detentions to be in violation of international human rights law. They were Suleiman bin Ibrahim al-Rashudi, Abdullah bin Hamid al-Hamid, Mohammed bin Fahd al-Qahtani, Abdulkareem bin Yousef al-Khoder, Mohammed bin Saleh al-Bajadi, Omar bin Mohammed al-Said, Fadhel Maki al-Manasif and Raef Badawi. In each case, the Working Group found their deprivation of liberty to be arbitrary because it was based on the peaceful exercise of free speech and peaceful association.[22] The Special Rapporteur is profoundly concerned that this decision remains unimplemented more than two years later and

[19] See SAU 14/2014.

[20] See SAU 2/2011, SAU 3/2011, SAU 5/2011, SAU 2/2012, SAU 6/2012, SAU 7/2012, SAU 8/2012, SAU 9/2012, SAU 13/2012, SAU 5/2013, SAU 8/2013, SAU 1/2014, SAU 2/2014, SAU 5/2014, SAU 6/2014, SAU 11/2014, SAU 13/2014, SAU 14/2014, SAU 1/2015, SAU 3/2015, SAU 11/2015, SAU 4/2016, SAU 5/2016, SAU 1/2017, SAU 2/2017, SAU 8/2017 and SAU 12/2017.

[21] A/HRC/20/27, para. 63.

[22] A/HRC/WGAD/2015/38.

reiterates the demand of the international community that the Government release the individuals named in the decision.

25. The Special Rapporteur is further concerned at the pattern of systematic repression in the country's Eastern Province, where the majority of the Shia population resides. The Special Rapporteur received credible allegations that many individuals protesting against repression of the Shia had been detained. Their cases are currently making their way through the Specialized Criminal Court. Many of these individuals were reportedly peaceful protesters, simply asking for increased religious freedoms, equal rights for the Shia community and political reform. Some have been convicted for the expression of their political views, some for coordinating protests through social media and some even for providing first aid to protesters. In this process, a number of individuals who were under the age of criminal responsibility at the time they committed the alleged offences have now been sentenced to death. Others have already been executed.[23]

26. In one case, a Sunni man was convicted by the Specialized Criminal Court for having published an article criticizing prejudices by Sunni religious scholars towards members of the Shia branch of Islam and their beliefs. He was sentenced by the Specialized Criminal Court on 17 June 2013 on charges that included sowing discord, harming public order and the image of the State, questioning the integrity of State officials and defaming religious leaders. The Court banned him from writing in the press and on social media networks, and from appearing on television or radio. The appeal division of the Specialized Criminal Court upheld the sentence in June 2014.[24]

27. The Special Rapporteur notes that these arrests, detentions and convictions not only reveal serious flaws in the Saudi counter-terrorism acquis, but also send a message to citizens and human rights defenders that they will be prosecuted if they engage in these broadly defined activities.

28. The Special Rapporteur strongly condemns the use of counter-terrorism legislation with penal sanctions against individuals peacefully exercising their rights to freedom of expression, as well as freedom of religion or belief and freedom of peaceful association and assembly.[25] As a matter of international law, the imperative of effective counter-terrorism cannot lawfully be misused as an excuse to quash public advocacy by peaceful critics, human rights activists and members of minority groups. Yet this is routine in Saudi Arabia today.

29. The Special Rapporteur reiterates his recommendation, first made to the Government at the conclusion of the country visit, that it must urgently establish an independent national security and due process review mechanism to re-examine all cases in which individuals are currently serving sentences of imprisonment based on acts that constitute the exercise of free speech, freedom of thought, conscience, religion or opinion, or freedom of peaceful assembly and association. The mechanism should have power to commute or pardon all such prisoners with immediate effect.

C. Unfair trials before the Specialized Criminal Court

30. Public information about cases before the Specialized Criminal Court is scarce. The Court was established in October 2008 to try detainees held in connection with terrorist offences. At that time, files relating to 991 detainees had been prepared and they were to stand trial on capital charges. In 2009, the Ministry of the Interior disclosed that the trials

[23] See SAU 9/2014, SAU 12/2014, SAU 6/2015, SAU 8/2015, SAU 2/2016, SAU 5/2016, SAU 7/2016 and SAU 7/2017.

[24] See SAU 11/2015.

[25] In its resolutions 25/18, 27/31, 32/31 and 34/5, the Human Rights Council noted its grave concern that "in some instances, national security and counter-terrorism legislation and other measures, such as laws regulating civil society organizations, have been misused to target human rights defenders or have hindered their work and endangered their safety in a manner contrary to international law".

had begun. Most cases dealt with by the Court are shrouded in secrecy.[26] Yet the Court appears to be very active: according to figures made available to the Special Rapporteur, by January 2016, the court had tried 2,225 cases involving 6,122 defendants. The Special Rapporteur was reliably informed that the Court had initially focused on allegations of political violence linked to Al-Qaida. However, this began to change in 2010 and for the past eight years the Court has been increasingly used for the prosecution of human rights and political activists. Far from a gradual modernization and improvement of the human rights situation that the Government is keen to portray internationally, the true picture seems to be that Saudi Arabia is backsliding into ever more severe political repression.

31. The secrecy of these trials raises serious concerns about their fairness. The Special Rapporteur received many reports about due process violations, including the lack of an effective habeas corpus guarantee; trials proceeding in secret; trials going ahead in the absence of defence lawyers; and trials in absentia with no effective defence. The Special Rapporteur received broadly consistent reports concerning the use of torture and the ill-treatment of detainees; arbitrary arrests and detention; violation of the right to independent legal counsel in detention (a key protection against abuse); the absence of genuinely independent medical examinations of suspects alleging torture; the practice of holding suspects incommunicado or in secret detention; the admission of evidence obtained under torture in breach of the obligations of Saudi Arabia under article 15 of the Convention against Torture; and executions following manifestly unfair trials.[27] The President of the Specialized Criminal Court assured the Special Rapporteur that all the rights guaranteed to an accused person were protected. The Special Rapporteur does not accept that to be the case.

I. Use of torture, coerced confessions and lack of accountability

32. During his visit, the Special Rapporteur was informed by the Government that there were legal safeguards in place to prevent torture under the Code of Criminal Procedure of 2013. The Government categorically denies that torture is ever committed on any detainee, and assured the Special Rapporteur that all detainees were afforded all their legal rights all of the time. That would be a surprising assertion for any State to make, but all the more so in the case of Saudi Arabia.

33. All prisons and places of detention in Saudi Arabia are under the supervision of the Bureau of Investigation and Public Prosecution (Department of the Attorney General). This institution is empowered to carry out inspections to monitor the conditions of detention of detainees and to ensure that the appropriate regulations are being applied. The Prosecutor's Office is charged with investigating allegations of torture. In accordance with paragraph 5 of the Medical Services Regulations, promulgated by ministerial decision No. 4093 (25 September 1978), all persons should undergo a medical examination at the time of their admission to prison, followed by periodic medical check-ups.

34. In addition, the Government pointed to the existence of prison and police monitoring mechanisms within the Saudi Human Rights Commission and the National Society for Human Rights. The representatives of both organizations informed the Special Rapporteur that they carried out unannounced visits to prisons and places of detention and evaluated complaints of ill-treatment. Both organizations have offices located within certain prisons.

35. However, the Special Rapporteur received well-documented reports of the use of torture and ill-treatment by law enforcement officials against individuals accused of having committed acts of terrorism, and the use of coerced confessions as the sole or decisive evidence in their convictions.[28] In a report published in June 2016, the Committee against Torture expressed its deep concern at the numerous reports brought to its attention that

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[26] See also Amnesty International, *Saudi Arabia: Assaulting Human Rights in the Name of Counter-Terrorism* (London, 2009), MDE23/009/2009.

[27] See SAU 5/2016.

[28] Ibid. See also A/HRC/WGAD/2015/38; Boghardt, "From ISIS to activists"; and Oliver Windridge, "Fatally flawed: an analysis of the judgment against a youth protester sentenced to death by Saudi Arabia's Specialized Criminal Court".

torture and other ill-treatment were commonly practised in prisons and detention centres in Saudi Arabia, in particular in branches of the General Directorate of Investigation of the Ministry of the Interior and in Al-Mabahith detention centres.[29] The methods used allegedly include electric shocks, sleep deprivation, incommunicado and prolonged solitary detention, and beatings to the head, face, jaw and feet.[30] He recalls that the particular severity of the crime of torture is reflected in the special position its prohibition takes in international law, as both a peremptory norm of customary international law (*jus cogens*) and one of the few absolute and non-derogable human rights.

36. The Committee against Torture noted its concern that, in Saudi Arabia, coerced confessions were admissible evidence in court in breach of article 5 of the Convention against Torture.[31] It condemned the absence of specific provisions to invalidate confessions obtained in violation of the Convention, including the reported failure to investigate allegations of coerced confessions. The Special Rapporteur recalls that the admissibility of coerced confessions in court provides an incentive to use torture. Article 15 removes this incentive and helps ensure the fairness of criminal proceedings and the reliability of verdicts.

37. The Special Rapporteur notes that allegations of torture or other forms of ill-treatment do not appear to be taken seriously by trial judges. Of particular concern is the fact that the Specialized Criminal Court has reportedly refused to launch investigations into allegations of torture.[32] In one case, the Court recorded the allegations of torture in its judgment, but declined a defence request to order an investigation or to produce the video recording of the accused's interrogation.[33] Between 2009 and 2015, more than 3,000 allegations of torture were formally recorded.[34] Despite this, the Special Rapporteur is not aware of a single official prosecuted for committing an act of torture or other ill-treatment. The theoretical protections enshrined in law appear illusory in practice.

38. The Special Rapporteur recalls that victims of torture and other ill-treatment must have a right to lodge a complaint of ill-treatment in custody.[35] The threshold for an admissible complaint must not deprive the procedure of its effectiveness.[36] Any allegation must be promptly followed by an impartial examination by a body that is independent of the alleged perpetrator. Whenever there are reasonable grounds to believe that an act of torture or ill-treatment has been committed, article 12 of the Convention against Torture imposes an obligation on the State to investigate.[37]

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[29] Article 2 of the Code of Criminal Procedure forbids causing bodily or moral harm to a person under arrest or subjecting him to torture or degrading treatment. Royal Decree No. 43 (16 June 1958) provides for a sentence of up to 10 years' imprisonment for an official who is proven to have engaged in abuse or coercion, such as torture or cruel treatment, while in office; this includes imposition of exemplary punishment. It further stipulates that anyone who has suffered harm shall have the right to appropriate compensation (CAT/C/SAU/Q/2/Add.2, para. 2).

[30] See SAU 1/2008, SAU 2/2008, SAU 9/2008, SAU 11/2008, SAU 1/2009, SAU 5/2009, SAU 6/2009, SAU 2/2011, SAU 3/2011, SAU 2/2012, SAU 3/2012, SAU 8/2012, SAU 10/2012, SAU 3/2013, SAU 7/2013, SAU 1/2014, SAU 5/2014, SAU 6/2014, SAU 10/2014, SAU 11/2014, SAU 1/2015, SAU 3/2015, SAU 5/2015, SAU 6/2015, SAU 8/2015, SAU 10/2015, SAU 11/2015, SAU 2/2016, SAU 5/2016, SAU 7/2016, SAU 1/2017, SAU 7/2017 and SAU 1/2018.

[31] CAT/C/SAU/CO/2, para. 23.

[32] Judges of the Court have repeatedly refused to act on claims made by defendants facing terrorism charges that they were subjected to torture or ill-treatment during interrogations for the purpose of compelling a confession (CAT/C/SAU/CO/2, para. 17).

[33] See Windridge, "Fatally flawed".

[34] CAT/C/SAU/Q/2/Add.2, para. 70.

[35] See arts. 12 and 16 of the Convention against Torture and A/HRC/13/39/Add.5.

[36] Committee against Torture, *Parot v. Spain* (CAT/C/14/D/6/1990), para. 10.4; *Blanco Abad v. Spain* (CAT/C/20/D/59/1996), para. 8.6; *Abdelli v. Tunisia* (CAT/C/31/D/188/2001), para. 10.6; *Ltaief v. Tunisia* (CAT/C/31/D/189/2001), para. 10.6, and *Dimitrov v. Serbia and Montenegro* (CAT/C/34/D/171/2000), para. 7.2.

[37] CAT/C/SR.145, para. 10; CAT/C/SR.168, para. 40; CAT/C/FRA/CO/3, para. 20; and *Blanco Abad v. Spain*, para. 8.2.

39. Torture can be difficult to prove. The Special Rapporteur notes that Saudi counter-terrorism legislation allows for incommunicado detention for extended periods.[38] The General Assembly noted, in its resolution 70/146, that prolonged incommunicado detention or detention in secret places could facilitate the perpetration of torture and other cruel, inhuman or degrading treatment or punishment and could in itself constitute a form of such treatment.[39] The Committee against Torture has frequently confirmed that incommunicado detention effectively deprives detainees of legal safeguards against torture.[40]

40. The Special Rapporteur received testimonies of individuals who had never seen a lawyer during the entire duration of their investigation. Others had met their lawyers very late in the process. Early access to a lawyer is critical in achieving basic levels of transparency. The practice in Saudi Arabia leaves detainees completely at the mercy of the detaining authority.[41] At the end of his country visit, the Special Rapporteur called upon the Government to introduce immediate reform to guarantee the automatic presence of lawyers after a suspect's detention and to abolish the existing practice whereby access to legal representation required the permission of the Bureau of Investigation and Public Prosecution.[42] Once again, Saudi Arabia not only ignored the Special Rapporteur's recommendation, but introduced new provisions in flagrant defiance of it. The 2017 Law, introduced following the country visit, provides that the Public Prosecutor now enjoys unconstrained discretion to forbid lawyers from communicating with their clients at any time during an investigation.[43]

41. The failure of Saudi Arabia to provide minimum procedural safeguards during detention and interrogation, and its judicial practice of admitting coerced confessions into evidence, strongly suggests that the practice is officially endorsed.[44] The situation in Saudi Arabia amounts to a systematic and flagrant denial of justice in this regard. International human rights obligations prohibit any State from extraditing suspects to face trial in Saudi Arabia in the absence of independently verifiable and solid guarantees against ill-treatment, and an enforceable undertaking not to use arguably coerced confessions as evidence. To meet international standards, such guarantees must be backed by effective independent monitoring.

2. Lengthy pretrial detention and flawed investigations

42. Individuals charged with terrorist offences in Saudi Arabia are subjected to exceptionally lengthy periods of pretrial detention.[45] Under the 2014 Law, individuals could be detained indefinitely by order of the Specialized Criminal Court. Under the 2017 Law, the Public Prosecution must now issue an arrest warrant within seven days of a suspect's arrest, a period which is seriously in excess of widely accepted international standards. The warrant does not need to provide details about the charges brought.[46]

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[38] See art. 6 of the 2014 Law and arts. 20–21 of the 2017 Law.

[39] Para. 13.

[40] CAT/C/SAU/CO/2, para. 16.

[41] A/HRC/13/39/Add.5.

[42] See art. 10 of the 2014 Law.

[43] Art. 21.

[44] See Committee against Torture, *Niyonzima v. Burundi* (CAT/C/53/D/514/2012). See also the African Commission on Human and Peoples' Rights, *Egyptian Initiative for Personal Rights and Interights v. Egypt*, communication No. 334/2006, decision of 1 March 2011, para. 218: "once a victim raises doubt as to whether particular evidence has been procured by torture or ill-treatment, the evidence in question should not be admissible, unless the State is able to show that there is no risk of torture or ill-treatment. Moreover, where a confession is obtained in the absence of certain procedural guarantees against such abuse, for example during incommunicado detention, it should not be admitted as evidence".

[45] The Committee against Torture showed its concern, in 2016, that the State party's laws allow detained persons to be held without charge for up to six months and they do not require the authorities to promptly present persons deprived of their liberty to a judge who has the power to order their release nor do they guarantee the right of persons deprived of their liberty to have prompt access to independent medical assistance (CAT/C/SAU/CO/2, para. 14).

[46] Arts. 5 and 19.

43. The new counter-terrorism legislation confers on the Presidency of State Security the authority to conduct searches, investigations, seizures, and criminal and administrative prosecutions[47] without judicial oversight. The Presidency of State Security was established by royal decree in July 2017 purportedly in order to coordinate security institutions. The exercise of these powers is now under the direct authority of the King, thus sidestepping the Ministry of the Interior.[48] This reflects the increasing centralization of power in Saudi Arabia.

44. Individuals are legally compelled to provide information in counter-terrorism investigations. Such a legal obligation overrides essential privacy protections, such as legal professional privilege and journalistic privilege.

45. Article 15 of the 2017 Law provides broad powers for State authorities to use physical force on undefined grounds. It would seem to permit the use of force against individuals participating in peaceful gatherings. The use of force in such circumstances would be a violation of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

46. Article 27 authorizes the Specialized Criminal Court to hear secret witnesses and expert testimonies without providing the defence with an opportunity to cross-examine in person or through counsel. This violates the fundamental rights of defence, and can only be consistent with the right to a fair trial if counterbalanced by effective safeguards. That is not the case in Saudi Arabia.

3. Lack of independence

47. The Committee against Torture had already found in 2016 that the Specialized Criminal Court was insufficiently independent of the Ministry of the Interior.[49] The new legislation strips away much of the investigatory powers of the Ministry of the Interior and places them directly under the authority of the Public Prosecution and the Presidency of State Security, both of which report directly to the King. Again, this is consistent with the increasing centralization of power in the monarchy and reflects a lack of confidence in independent civil institutions. Concerns regarding the lack of independence of the Specialized Criminal Court therefore remain undiminished.

4. Use of the death penalty following manifestly unfair trials

48. The Special Rapporteur expresses his grave concern about the lack of due process in terrorism cases generally. This concern is particularly acute in cases involving the imposition of the death penalty. In 2015, more than 158 people were reportedly executed, the highest number of executions recorded in Saudi Arabia since 1995.[50] In 2016, there were 154 executions. The mass execution of 47 individuals on one day (2 January 2016) provoked an international outcry.[51] These individuals were killed by public beheading and firing squad, following judicial proceedings that did not meet minimum international standards of due process. Among them were a number of people with psychosocial disabilities, and individuals who were under the age of 18 at the time the crimes were committed. Some had been convicted of non-violent political offences.[52] Especially provocative was the execution of prominent Shia cleric Sheikh Nimr al-Nimr, who had been convicted in connection with political activities.[53]

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[47] Art. 4 of the 2017 Law.

[48] *Saudi Gazette*, "Saudi Arabia creates new security authority", 20 July 2017.

[49] CAT/C/SAU/CO/2, para. 17.

[50] A/71/332, para. 23.

[51] Office of the High Commissioner for Human Rights (OHCHR), "Zeid deplores mass execution of 47 people in Saudi Arabia", 3 January 2016.

[52] See a joint press release issued by several Special Rapporteurs and the Committee on the Rights of the Child, "Saudi Arabia must immediately halt execution of children — UN rights experts urge", 22 September 2015.

[53] See SAU 9/2014, SAU 12/2014, SAU 6/2015, SAU 2/2016, SAU 5/2016 and SAU 7/2017.

49. On 1 June 2016, 24 individuals were put on trial in relation to the 2011 pro-democracy protests (the "Awamiyah cell"). The Specialized Criminal Court convicted and sentenced 14 of them to death. Reportedly, the trial failed to meet due process and fair trial standards, and the defendants were tortured and denied access to lawyers.[54] This case represents a significant cause for concern.

50. Since the Special Rapporteur's visit, several more individuals from the Shia minority have been sentenced to death and face imminent execution for their involvement in pro-democracy demonstrations in the east of the country in 2011 and 2012. The trials were described as manifestly unfair by civil society groups.[55] The Saudi Minister of Justice reportedly described the trials as "terrorist cases", which were "held in the presence of their relatives and representatives of the media and the Human Rights Commission".[56] The Special Rapporteur has considered in detail an independent record of one such prosecution in which there appeared to have been multiple violations of due process.[57]

51. The Special Rapporteur is dismayed that the 2017 Law provides for the death penalty for crimes that do not entail the loss of life.

52. In its resolution 71/187, the General Assembly called upon States to reduce the number of offences punishable by death. The Secretary-General has noted that the application of the death penalty for overly broad and vaguely defined terrorist offences remains a serious concern. To the same effect, in his statement to the sixth World Congress against the Death Penalty,[58] the High Commissioner for Human Rights stated that some States criminalized the legitimate exercise of fundamental freedoms with overly vague counter-terrorism legislation. As the High Commissioner pointed out, the threat or use of the death penalty in such cases was an egregious violation of human rights.[59] The Special Rapporteur considers that this is apt to describe the institutionalized use of the death penalty in Saudi Arabia.

53. The Special Rapporteur concurs with the Secretary-General in stating that, in the light of the evolution of international human rights law and jurisprudence and State practice, the imposition of the death penalty — particularly in the barbaric and public way in which it is used in Saudi Arabia — is incompatible with the fundamental tenets of human rights law.

54. The circumstances surrounding the execution of the death penalty can constitute cruel, inhuman or degrading treatment or punishment or even torture. The methods of execution employed in Saudi Arabia include beheadings (by a swordsman) followed by public crucifixion.[60] Stoning to death and execution by firing squad are also commonplace. Sometimes the individual's hands and legs may be amputated following their execution by beheading, and the families denied access to the deceased's body.[61] People are executed in this way not only for grave crimes of violence, but for the so-called crimes of adultery, apostasy, witchcraft and sorcery. The Special Rapporteur considers that the use by Saudi Arabia of the death penalty is archaic, and inhuman and degrading, not only for the person who is executed but for all those who contribute to it or take part as spectators. It demeans and degrades the people of Saudi Arabia as a whole.

55. The Government should urgently review all current cases in which prisoners accused and sentenced for crimes of terrorism are facing the death penalty in order to ensure that international minimum standards are met in each case. This means that the death sentence

[54] See SAU 5/2016 and SAU 7/2017.

[55] See SAU 7/2017. Also see Human Rights Watch, "Saudi Arabia: 3 alleged child offenders await execution: torture allegations ignored in unfair trial", 17 April 2016; Human Rights Watch, "Saudi Arabia: 14 Shia at risk of imminent execution: increase in executions since leadership change", 10 August 2017; and Reprieve, "14 Saudis facing imminent execution for protest offences", 14 July 2017.

[56] RT, "Saudi Justice Min. defends secret court's death sentences for 14 Shia protesters", 7 August 2017.

[57] See Windridge, "Fatally flawed".

[58] OHCHR, "World Congress against the Death Penalty".

[59] A/71/332, para. 33.

[60] See SAU 2/2016.

[61] See SAU 5/2015.

may be imposed only for the most serious crimes that result in the loss of life, and should never be imposed on individuals who were minors at the time the crimes were committed or on persons with psychosocial or intellectual disabilities. Only full respect for stringent due process guarantees distinguishes capital punishment, as permitted under international law, from a summary or arbitrary execution. If, contrary to international standards, Saudi Arabia remains wedded to the cult of execution, it must, as a minimum concession to human dignity, urgently search for more humane methods of killing people that do not glorify public mutilation and humiliation and lead to the degradation of all concerned.

D. Rehabilitation

56. The Special Rapporteur commends the efforts of the Government to counter the spread of violent extremism and its associated ideologies, not only with security measures but also with concerted action combining social, political and economic assistance and integration. He was particularly impressed by the conditions of detention in two of the five prisons that he visited, which were dedicated to holding those convicted or suspected of having committed terrorist offences. He visited Al Hair and Dhahban prisons, examined the facilities and spoke with both staff and inmates at both institutions. The standard of care, and the conditions of detention in these facilities, including medical, vocational training and recreational facilities, appeared above the norm. Generous provision is made for family and conjugal visits, and prisoners are encouraged to remain close to their families. Saudi Arabia can rightly be proud of the rehabilitative nature of the facilities in which it houses certain prisoners accused of terrorism.

57. The Special Rapporteur was impressed with the professional, evidence-based and imaginative rehabilitation and reintegration programmes designed in the Mohammed Bin Naif Counselling and Care Centre. This facility houses prisoners convicted of terrorism who are nearing the end of their sentences and provides them with a range of alternative life skills, from psychotherapy, to professional training and religious instruction, which are designed to offer a counter-narrative to radicalization. The centre claims an 86 per cent non-recidivism rate — an estimate that the Special Rapporteur was not in a position to verify. Its methodology deserves the attention of other States.

58. At the same time, the Special Rapporteur noted the absence of judicial involvement in placing individuals in these centres.[62] With the entry into force of the 2017 Law, the responsibility for the centres has been moved from the Ministry of the Interior to the Presidency of State Security. Individuals can be deprived of their liberty for long periods of time in what can only be described as administrative detention. The Special Rapporteur was informed that several peaceful dissidents had been transferred to such "de-radicalization" centres. The Special Rapporteur recalls that, in the absence of authorization by an independent judiciary, enrolment must be truly voluntary if it is to escape stigmatization as arbitrary detention.

E. Counter-terrorism operations in Yemen and the Syrian Arab Republic

59. In 2015, Saudi Arabia took the lead in a newly formed coalition of eight countries to mount a military operation in Yemen.[63] This operation is aimed at restoring the authority of the duly elected, internationally recognized Government of Yemen. The Government of Yemen was deposed in 2015 by opposition forces led by the armed Shia Houthi militia. The Special Rapporteur was informed by the Government of Saudi Arabia that it classified the Shia Houthi rebels in Yemen as State-sponsored terrorists, allegedly supported by the

[62] See art. 27 of the 2014 Law and art. 89 of the 2017 Law refer to persons detained for or convicted of any of the crimes provided for in the Laws.

[63] The coalition was initially made up of military forces from Bahrain, Egypt, Jordan, Kuwait, Morocco, the Sudan, Qatar and the United Arab Emirates, as well as Academi mercenaries from the United States of America. It has received logistical and intelligence support from France, the United Kingdom of Great Britain and Northern Ireland and the United States.

Islamic Republic of Iran, and that its operations were therefore, at least in part, counter-terrorism operations. Between March 2015, when the Office of the United Nations High Commissioner for Human Rights (OHCHR) began reporting on civilian casualties, and 30 August 2017, at least 5,144 civilians were killed and at least 8,749 injured. Children accounted for 1,184 of those who were killed and 1,592 of those injured. According to OHCHR, coalition airstrikes continued to be the leading cause of civilian casualties in the conflict and of child casualties. Some 3,233 of the civilians killed were reportedly killed by Saudi Arabia-led coalition forces.[64] In addition to markets, residential areas and public and private infrastructure, there were notable airstrikes in 2017 against funeral gatherings and small civilian boats.[65] Shortly after the Special Rapporteur's visit, on 25 August 2017, an airstrike took place on apartment buildings in the Yemeni capital, which allegedly killed at least 16 civilians and wounded a further 17.[66]

60. The Special Rapporteur recalls that all parties to the conflict in Yemen, including Saudi Arabia, are obliged to respect the applicable rules of international humanitarian law, including the principles of precaution, distinction and proportionality. Civilians and civilian objectives must be protected at all times. Hospitals, schools and religious sites are subject to heightened protection. Parties to the conflict must facilitate the rapid and unimpeded passage of humanitarian relief.[67] Directly targeting civilians and civilian objects, conducting disproportionate or indiscriminate attacks or failing to take all necessary precautions to avoid or minimize the impact on civilians constitute serious violations of international humanitarian law, and may amount to war crimes.[68]

61. The Special Rapporteur was informed by the Government that each airstrike was independently investigated and that the results, where appropriate, were made public. The Special Rapporteur is, nonetheless, extremely concerned that, despite the creation, in August 2016, of the Joint Incident Assessment Team (an investigative mechanism comprised of 14 individuals with military and legal experience from the coalition member States) very little information on civilian casualties has been officially released. In all but one of the cases examined by the Assessment Team, it found that the coalition was pursuing a legitimate military objective. OHCHR has expressed concern that the Assessment Team appeared to accept at face value the assertions that an intended target had been a legitimate military objective justifying the attacks that had resulted in civilian casualties and damage or the destruction of civilian objects. Despite the frequency and severity of civilian casualties and damage to civilian objects, no concrete action appears to have been taken to hold perpetrators accountable or to provide adequate reparations to the victims.[69]

62. The Special Rapporteur reminds Saudi Arabia that international human rights law and international humanitarian law impose an obligation on States to investigate alleged violations effectively, to ensure that perpetrators are brought to justice and to provide victims with full and effective reparation. Reparation implies not only that victims must receive adequate compensation, but also that they have the right to truth and to be afforded guarantees against non-repetition. Saudi Arabia is thus subject to an international legal obligation to ensure that a fact-finding investigation, independent of the chain of command involved in the strike, is conducted by the appropriate coalition party in any case in which there are reliable indications that civilians may have been killed or injured, and to make the results public. The Special Rapporteur calls for greater transparency regarding civilian casualties in Yemen, and calls upon the Government to ensure that such investigations are conducted, in each case, in a transparent and verifiable manner so that the true extent of civilian casualties can be made public.

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[64] OHCHR, "Yemen: an 'entirely man-made catastrophe' — UN human rights report urges international investigation", 5 September 2017.

[65] A/HRC/36/33, para. 28.

[66] Human Rights Watch, "Yemen: hiding behind coalition's unlawful attacks — lack of transparency underscores need for international inquiry", 8 September 2017.

[67] A/HRC/33/38, para. 10.

[68] A/HRC/36/33, para. 28.

[69] Ibid., para. 80.

63. Since his country visit, the Special Rapporteur has been informed of the devastating effects on the impoverished civilian population of the reported decision by Saudi Arabia to close airports and seaports in Yemen, setting up a de facto blockade. According to United Nations estimates, Yemen imports up to 90 per cent of its daily needs.[70] More than 7 million people are being kept alive by humanitarian aid. In a report to the Security Council in January 2018, the situation in Yemen was described as the world's largest catastrophe, with more than 22 million people requiring assistance, 8 million people at risk of famine, a cholera epidemic of more than a million cases and an outbreak of diphtheria, which is spreading. The spokesperson for the Office for the Coordination of Humanitarian Affairs has stated that Yemen is on the brink of a man-made famine, and its civilian population is being kept alive thanks to humanitarian operations. The spokesperson stressed that the lifeline has to be kept open and it is absolutely essential that the operations of the United Nations Humanitarian Air Service be allowed to continue unhindered.[71]

64. The Special Rapporteur welcomes the decision of 20 December 2017 by the coalition to facilitate some access to vital humanitarian assistance and encourages Saudi Arabia to ensure that such assistance is provided without impediment. Depriving the civilian population of vital assistance in the context of the armed conflict in Yemen would constitute a grave breach of humanitarian law. OHCHR has already expressed alarm at a series of recent attacks on civilians that have killed dozens of people, including several children. On 4 December 2017, the High Commissioner for Human Rights announced the establishment of the Group of Eminent International and Regional Experts on Yemen, as mandated by the Human Rights Council. The Group documents human rights violations by all parties to the conflict and works towards establishing accountability and ending impunity.

65. Turning to the engagement of Saudi Arabia in the conflict in the Syrian Arab Republic, the Special Rapporteur has received consistent and credible reports that several of the most violent extremist non-State armed groups have benefited from political, military, financial and logistical support from within Saudi Arabia. Both State and private actors have been implicated in these reports. This runs counter to the Government's expressed commitment to stem all terrorist financing and its stated policy to combat terrorism, both at home and outside its borders. These allegations, corroborated by a variety of credible public sources,[72] require investigation by the International, Impartial and Independent Mechanism to Assist in the Investigation and Prosecution of Persons Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic since March 2011. This new Mechanism, established pursuant to General Assembly resolution 71/248, is responsible for investigating crimes committed by all sides in the conflict.

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[70] See https://unocha.exposure.co/eleven-facts-about-the-yemen-crisis.

[71] Casey Quackenbush, "Saudi Arabia won't let aid enter Yemen. That could cause 'catastrophic' famine", *Time*, 9 November 2017.

[72] See, among other public sources, Patrick Cockburn, "We finally know what Hillary Clinton knew all along — US allies Saudi Arabia and Qatar are funding ISIS", *Independent* (London), 14 October 2016; Gareth Porter, "How America armed terrorists in Syria", American Conservative, 22 June 2017; United States, Defence Intelligence Agency, classified memorandum dated 2012 (www.judicialwatch.org/wp-content/uploads/2015/05/Pg.-291-Pgs.-287-293-JW-v-DOD-and-State-14-812-DOD-Release-2015-04-10-final-version-1.pdf), revealed by WikiLeaks the contents of which were confirmed by a former director of the Agency, Michael Flynn, in an Al Jazeera interview dated 13 January 2016; WikiLeaks cable No. 09STATE131801_a, dated 30 December 2009 (https://wikileaks.org/plusd/cables/09STATE131801_a.html); and Vice-President Joe Biden's speech to Harvard students and his later apologies: Carol Giacomo, "Joe Biden apologizes for telling the truth", *New York Times*. See also the investigative report by Dilyana Gaytandzhieva, "350 diplomatic flights carry weapons for terrorists", *Trud*, 2 July 2017; followed up by Tyler Durden, "Journalist interrogated, fired for story linking CIA and Syria weapons flights", *Zero Hedge*, 28 August 2017; interview of the former Prime Minister of Qatar, Hamad Bin Jassim, on Qatari national TV, dated 25 October 2017 (www.youtube.com/watch?v=nOdwO4XCwHk); Editorial Board, "Fighting, while funding, extremists", *New York Times*, 19 June 2017; and Martin Williams, "FactCheck Q&A: is Saudi Arabia funding ISIS?", Channel 4, 7 June 2017.

V. Conclusions and recommendations

66. **There is no doubt that Saudi Arabia has suffered numerous terrorist acts on its soil in the past 30 years. It is also home to large numbers of foreign terrorist fighters returning from the conflicts in Iraq and the Syrian Arab Republic.[73] The Government rightly feels that it needs to protect its citizens and take meaningful and comprehensive measures to address the threat of terrorism.**

67. **Experience shows, however, that disproportionate or discriminatory counter-terrorism measures have a lasting adverse impact. Counter-terrorism measures that violate basic human rights have proven to be both ineffective and counterproductive. Counter-terrorism measures cannot be limited to the use of military force, law enforcement measures and intelligence operations alone.[74] Counter-terrorism measures can only be effective if they respect human rights.[75] It is essential that any measures taken by Saudi Arabia to combat terrorism and violent extremism (however defined) comply with all of the State's international legal obligations, including, in particular, international human rights law, refugee law and humanitarian law.[76]**

68. **As a key counter-terrorism partner at the international level, Saudi Arabia must show that it is serious about countering and preventing terrorism and violent extremism that can lead to terrorism. Yet it is clear that counter-terrorism measures have been misused to stifle political dissent, suppress opposition and silence calls for reform by peaceful critics.**

69. **Those who peacefully exercise their right to freedom of expression are systematically persecuted in Saudi Arabia. Many languish in prison for years. Others have been executed after blatant miscarriages of justice. A culture of impunity prevails for public officials who are guilty of acts of torture and other ill-treatment. Peaceful avenues for redress of grievances are foreclosed by the use of repressive measures to silence civil society. There is an almost complete lack of transparency concerning prosecutions for terrorist acts and a corresponding accountability gap regarding extraterritorial counter-terrorism operations. Rather than address these issues, which the Special Rapporteur raised with the Government at the end of his country visit, Saudi Arabia has instead adopted ever more draconian counter-terrorism legislation. These are not the actions of an administration that is confident and secure. Rather, the increasing centralism that is evident in all areas betokens a level of insecurity about the present administration's position at home and in the world. While the Government treated the Special Rapporteur with professional courtesy during his visit, officials prevented him from speaking to the prisoners he wished to interview in private, taking him instead to carefully selected showcase facilities. Rather than engaging positively and constructively with the issues, the Government has resorted to blanket denials, bland reassurances and invocations of its own interpretation of sharia law to justify its actions. If it is to play any effective role in combating international terrorism, Saudi Arabia must urgently change course.**

70. **When Saudi Arabia presented its candidature for membership of the Human Rights Council, it pledged to commit itself to the highest standards of human rights protection. The picture that emerges from this report casts doubt upon whether it was wise for Saudi Arabia to be admitted to the Council, and threatens to undermine the authority of the Council itself in the eyes of the world. The Special Rapporteur**

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[73] According to the latest figures, 3,244 Saudi nationals have gone to the Syrian Arab Republic or Iraq, while 7,523 have been stop-listed in Turkey. Richard Barrett, "Beyond the Caliphate: foreign fighters and the threat of returnees" (Soufan Centre, October 2017).

[74] Security Council resolution 2178 (2014).

[75] Global Counter-Terrorism Strategy, General Assembly resolution 60/288.

[76] Security Council resolutions 1373 (2001), 1456 (2003), 1566 (2004), 1624 (2005), 2178 (2014), 2242 (2015), 2341 (2017), 2354 (2017), 2368 (2017), 2370 (2017), 2395 (2017) and 2396 (2017); as well as Human Rights Council resolution 35/34 and General Assembly resolutions 49/60, 51/210, 72/123 and 72/180.

accordingly calls upon Saudi Arabia to demonstrate, through concrete measures, that it genuinely intends in the future to uphold the highest standards in the promotion and protection of human rights,[77] and to comply with the commitments it made in March 2016 when putting itself forward as a candidate to the Human Rights Council.[78]

71. **The Special Rapporteur recommends that:**

(a) **The Government must urgently review the definition of terrorism in the 2017 Law and bring it into line with international human rights norms. In particular, it must ensure that its provisions are defined with precision and cannot serve as a basis for prosecuting individuals engaged in non-violent expression and political advocacy. Saudi Arabia must refrain from using antiterrorism and national security legislation to stifle peaceful political dissidents and critics of the actions of the State, the current regime and the Royal Family;**

(b) **Saudi Arabia should urgently establish an independent national security and due process review mechanism to carry out a thorough independent review of all cases involving crimes allegedly committed in speech or writing. The mechanism should first seek to identify all individuals that are currently serving sentences of imprisonment for acts that objectively constitute the exercise of their right to free speech, freedom of thought, conscience, religion or opinion, or the right to freedom of peaceful assembly and association. The mechanism should have the power to commute or pardon all such prisoners with immediate effect and should proceed to do so. The composition of the mechanism should include one member of the senior judiciary, together with a majority of independent legal academics, lawyers in independent practice and representatives of civil society;**

(c) **Saudi Arabia is obliged to investigate, promptly and ex officio, all allegations of torture and ill-treatment and other serious human rights violations committed under its counter-terrorism and national security framework. It must establish an independent effective and accessible avenue by which victims can lodge complaints about torture and ill-treatment in all places of detention. Genuinely independent investigations must be established whenever there are reasonable grounds to suspect ill-treatment. The Government must ensure that complainants are not subject to reprisals and that victims of torture or ill-treatment receive adequate compensation. As part of this obligation, the relevant authorities are under an obligation to ensure the availability of independent consensual medical examinations at the time of arrest and at regular intervals thereafter;**

(d) **Given the prevalence of torture allegations in terrorism cases, the Government must ensure that coerced confessions are always inadmissible in law and in practice, except when invoked as evidence against a person accused of torture. Improved judicial training should be introduced to ensure that all judges are made aware of their obligation to take any allegation of torture seriously and to investigate it thoroughly;**

(e) **Measures should be taken to strengthen the independence of the Specialized Criminal Court and to ensure increased transparency in its proceedings;**

(f) **All individuals charged under the counter-terrorism legislation must be afforded a genuinely fair trial that respects the international guarantees of due process. The 2017 Law should be amended to provide effective protection of the right to access counsel, the right to judicial oversight of detention and the right to limits on the length of pretrial detention;**

(g) **Saudi Arabia is legally obliged to implement in full the specific and detailed recommendations of the Committee against Torture and the decisions of the Working Group on Arbitrary Detention;**

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[77] General Assembly resolution 60/251, paras. 8–9.

[78] A/71/72.

(h) **In the light of his findings, the Special Rapporteur recommends that Saudi Arabia should extend invitations to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the Special Rapporteur on the situation of human rights defenders, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the rights to freedom of peaceful assembly and of association to conduct country visits to further investigate the issues identified in this report;**

(i) **Saudi Arabia should sign and ratify the International Covenant on Civil and Political Rights and its first Optional Protocol, as well as the Optional Protocol to the Convention against Torture and enable the Subcommittee on Prevention of Torture to carry out regular unannounced inspections of all places of detention;**

(j) **The Government should introduce compulsory training programmes for law enforcement officials, investigators, prosecutors, judges and medical personnel on the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol);**

(k) **Saudi Arabia should immediately establish a moratorium on the use of the death penalty, with a view to becoming a party to the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty;**

(l) **The Government should introduce legislation to ensure that in all cases in which a counter-radicalization rehabilitation programme leads to a deprivation of liberty, it is authorized and supervised by an independent and impartial judicial authority;**

(m) **In its extraterritorial counter-terrorism operations in Yemen and the Syrian Arab Republic, Saudi Arabia must ensure that a fact-finding investigation, independent of the chain of command involved in airstrikes, is conducted in any case in which there are reliable indications that civilians may have been killed or injured. The Special Rapporteur calls for greater transparency, and calls upon the Government to ensure that such investigations are conducted in every such case and the true number of civilian casualties, including those killed, is made public;**

(n) **The Special Rapporteur calls on the Government to pursue its efforts to investigate allegations concerning the provision of material support from sources within Saudi Arabia for violent extremist armed opposition groups in the Syrian Arab Republic. The Government should fully cooperate with the two United Nations mechanisms with a mandate to document violations of human rights and humanitarian law by all parties to the conflict in the Syrian Arab Republic, to redouble its efforts to prevent effectively the supply of weapons to armed groups in the conflict and to engage actively in efforts to seek a peaceful political settlement to it.**

United Nations A/HRC/40/52/Add.3

General Assembly

Distr.: General
14 December 2018

Original: English

Human Rights Council
Fortieth session
25 February–22 March 2019
Agenda item 3
Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Visit to Sri Lanka

Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism*

Summary

In his former capacity as Special Rapporteur on the promotion and protection of human rights while countering terrorism, Ben Emmerson conducted a visit to Sri Lanka from 10 to 14 July 2017, to assess the progress Sri Lanka has achieved in its policies, laws and practices in the fight against terrorism since the end of its internal armed conflict. Progress in these areas is key to ensuring accountability, an end to the rule of impunity, and reconciliation, and thus to paving the way for lasting peace in Sri Lanka. In his report, the Special Rapporteur shares several key observations and human rights concerns with regard to the continued use of the Prevention of Terrorism Act of 1979, despite the long-overdue commitment of the Government to review and repeal it. The Act, inter alia, provides for an overly broad and vague definition of terrorism, lengthy administrative detention and ineffective judicial review, and extremely broad rules concerning the admission of confessions. He also expresses his concerns about the routine and systemic use of torture and ill-treatment under the Act and the conditions of detention. In particular, he found the conditions in the high-security wing of the prison in Anuradhapura that he visited to be inhumane.

Furthermore, the Special Rapporteur assesses that the progress of the new counter-terrorism legislation, together with the management of past cases under the Act, has been painfully slow, and this has, in turn, delayed the wider package of transitional justice measures that Sri Lanka committed to deliver in 2015. Furthermore, the Special Rapporteur observed a pervasive and insidious form of stigmatization of the Tamil community. Tamils are severely underrepresented in all institutions, particularly in the security sector and the judiciary, despite the importance of ensuring that all institutions adequately reflect the ethnic, linguistic and religious make-up of the State.

The Special Rapporteur makes several concrete recommendations and stresses that

* The summary of the report is being circulated in all official languages. The report itself, which is annexed to the summary, is being circulated in the language of submission only.

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Sri Lanka must urgently implement its commitments made in line with Human Rights Council resolution 30/1 to address the legacy of widespread and serious human rights violations that occurred in the context of the internal armed conflict in the country. The pervasive climate of impunity and the lack of accountability for serious human rights violations that occurred both during the conflict and in the aftermath requires immediate redress. The security sector is in need of urgent reform. The counter-terrorism legislation requires a complete overhaul to bring it into line with international human rights law. Failure to address these issues promptly and effectively will provide fertile ground for those intent on resorting to political violence, as real and perceived grievances are exploited by militants to garner support among vulnerable and alienated sections of the population. The price that future generations in Sri Lanka will have to pay for the continuation of this legal repression may prove as costly, or even costlier, than that which has so far confronted the present generation.

Annex

Report of the Special Rapporteur on the promotion and protection of human rights while countering terrorism on his visit to Sri Lanka

I. Introduction

1. In his former capacity as Special Rapporteur on the promotion and protection of human rights while countering terrorism, Ben Emmerson conducted a visit to Sri Lanka from 10 to 14 July 2017, at the invitation of the Government, to assess the progress Sri Lanka has achieved in its policies, laws and practices in the fight against terrorism since the end of its internal armed conflict, as measured against international human rights law. Progress in these areas is key to ensuring accountability, an end to the rule of impunity, and reconciliation, and thus to paving the way for lasting peace in Sri Lanka.

2. The Special Rapporteur expresses his appreciation to the Government for its invitation and commends the transparency and the largely courteous, constructive and cooperative way in which it facilitated this official visit, which allowed a frank and open dialogue on all issues of concern. The Special Rapporteur is particularly grateful for the efforts made by the Ministry of Foreign Affairs in ensuring the smooth conduct of the visit, and in coordinating the follow-up to it. He is grateful to all of the heads and staff of governmental institutions that he met. He is also grateful to the United Nations Resident Coordinator and members of the United Nations country team for the support extended during the visit.[1]

3. During his visit, the Special Rapporteur had an informative exchange of views with the Prime Minister, the Secretary to the President, the Secretary to the Ministry of Defence, the Minister of Foreign Affairs, the Minister of Law and Order and Southern Development, and the Minister of Prison Reforms, Rehabilitation, Resettlement and Hindu Religious Affairs. He also met with, among others, the Armed Forces Chief of Staff, the Commanders of the Navy, of the Army and of the Air Force, or their representatives, the Chief of National Intelligence, the Chairman of the National Police Commission, the Inspector General of the Police, the Chief of the Special Task Force Division, the Chief of the Criminal Investigation Department, the Chief of the Terrorist Investigation Division and the Commissioner General of Rehabilitation. He also met with the Minister of Justice.

4. The Special Rapporteur held discussions with the Attorney General and the Chief Justice, and High Court judges in Colombo, Anuradhapura and Vavuniya. He visited New Magazine Prison in Colombo and the prison in Anuradhapura, and was given an opportunity to meet and speak privately with detainees accused under the Prevention of Terrorism Act of 1979, and to observe the poor conditions in which some of them were detained. He also met with their lawyers and families, and other individuals affected by the implementation of the counter-terrorism policies and legislation in the country. Moreover, he met with the Chairperson and a commissioner of the National Human Rights Commission, and with representatives of civil society.

5. The Special Rapporteur shared his preliminary findings with the Government at the end of his visit on 14 July 2017.[2]

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[1] The Special Rapporteur would like to thank his senior legal adviser, Anne Charbord, for her assistance with the preparation of the present report.

[2] See www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=21883&LangID=E.

II. General context

6. Sri Lanka has a long and complex history of civil war, and political, economic, social and cultural tensions, against the backdrop of ethnic divisions, which has generated tremendous security challenges. Indeed, for almost 26 years, the majority Sinhalese Government faced an armed uprising from large segments of the marginalized and disenfranchised Tamil population, led by the Liberation Tigers of Tamil Eelam,[3] an organization that resorted to widespread violence and acts of terrorism, including suicide bombings and political assassinations. The Government responded with similarly widespread violence, which engulfed the country in three decades of conflict, culminating in a series of massacres that eventually brought the conflict to an end in 2009. The evolution of that terrible conflict, and the details of these events have been largely described in other reports of the Office of the United Nations High Commissioner for Human Rights (see, for example, A/HRC/30/61).

7. In 2015, following general elections, Sri Lanka transitioned to a coalition National Unity Government, which brought hope of reform, inclusiveness, justice and respect for human rights to all of the people of Sri Lanka. This momentum led to the adoption of Human Rights Council resolution 30/1 on promoting reconciliation, accountability and human rights in Sri Lanka, co-sponsored by the Government of Sri Lanka. The resolution reflects the commitment of the Government to taking a series of specific steps aimed at confronting the past, ending the culture of impunity for crimes committed by public officials, ensuring accountability, peace and justice, achieving durable reconciliation, and preventing the recurrence of the human rights violations committed by both sides to the conflict.

8. Importantly, through the resolution, the Council welcomed the commitment of the Government of Sri Lanka to review and repeal the Prevention of Terrorism Act, and to replace it with anti-terrorism legislation in accordance with contemporary international norms and practices. The Prevention of Terrorism Act had been used to commit some of the worst human rights violations, including widespread torture and arbitrary detention, in the run-up to and during the conflict, particularly to target minorities and suppress dissent (A/HRC/34/20, para. 45).

9. Well over two years after the adoption of resolution 30/1, and long into a two-year extension granted to the Government by the Human Rights Council through its resolution 34/1, it is timely to examine the progress made by Sri Lanka in implementing these commitments.

III. Key human rights challenges in countering terrorism

A. Counter-terrorism legal framework

10. Sri Lanka is a party to the main United Nations human rights treaties, including the International Covenant on Civil and Political Rights; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Convention on the Rights of the Child; the International Convention on the Elimination of All Forms of Racial Discrimination; the Convention on the Elimination of All Forms of Discrimination against Women; the Convention on the Rights of Persons with Disabilities; the International Convention for the Protection of All Persons from Enforced Disappearance; and the Optional Protocol to the Convention against Torture.

[3] The Liberation Tigers of Tamil Eelam has been listed as a terrorist organization by over 32 different States.

1. Prevention of Terrorism Act

11. The Prevention of Terrorism Act[4] was introduced in 1979 as temporary emergency legislation, to address the danger caused by, according to its preamble, "elements or groups of persons or associations that advocate the use of force or the commission of crime as a means of, or as an aid in, accomplishing governmental change within Sri Lanka". It was made permanent in 1982 and was still in force at the time of the Special Rapporteur's visit.[5] He remains concerned that it is still, however sporadically, used to arrest suspects, and that a number of individuals are still detained, awaiting trial, or serving long sentences under this piece of deeply flawed legislation.

(a) Definition of terrorism

12. The definition of terrorist acts contained in the Prevention of Terrorism Act (sect. 2) is overly broad and vague. It includes acts that would hardly qualify as "terrorist" even by the most generous definition, such as: causing "mischief to the property of the Government, any department, statutory board, public corporation, bank, cooperative union or cooperative society"; causing, "by words either spoken or intended to be read or by signs or by visible representations… commission of acts of violence or religious, racial or communal disharmony or feelings of ill will or hostility between different communities or racial or religious groups"; and erasing, mutilating, defacing or otherwise interfering with any words, inscriptions, or lettering appearing on any board or other fixture on, upon or adjacent to, any highway, street, road or any other public place. The definition also casts the net widely over potential offenders by including the offence of harbouring, concealing or in any other manner preventing, hindering or interfering with the apprehension of a proclaimed person or any other person, knowing or having reason to believe that such a person has committed an offence under the Act. Therefore, under the Act, the authorities have been able to stigmatize, brand and prosecute entire communities and members of civil society as "terrorists", and associate any form of peaceful criticism or dissent with terrorism. Because the definition is also the trigger for the use of extraordinary procedural powers, it has allowed the authorities to subject any person suspected of association, even indirect association, with the Liberation Tigers of Tamil Eelam, to arrest, detention, interrogation and lower standards of due process and fair trial guarantees.

(b) Lengthy administrative detention and lack of effective judicial review

13. The police are granted very broad powers of arrest and detention under the Prevention of Terrorism Act, as any person may be arrested and detained without a warrant (sect. 6 (1)).[6] While the detainee must be brought before a judicial authority within 72 hours, the judicial authority must — upon a written request from the police — remand the detainee in custody even if no charges have been brought. Further, the judicial authority cannot order the release of the detainee, unless the Attorney General — who is also the chief prosecutor — has consented (sect. 7 (1)). As remand in custody is allowed under the Act until the conclusion of the trial, the indefinite detention of a suspect is possible. The Act also allows for individuals to be detained further under a detention order issued by the Minister of Defence if they are suspected of being connected with or concerned in any unlawful activity, as broadly defined by the Act itself. Such an order — for investigatory or preventive purposes — can be renewed up to a total of 18 months (sect. 9 (1)), and is expressly excluded from any judicial review of its legality (sect. 10). Thus, the arrest and detention of a broad category of individuals is placed exclusively in the hands of the

[4] Prevention of Terrorism Act No. 48 of 1979, amended by Acts No. 10 of 1982 and No. 22 of 1988.

[5] The Prevention of Terrorism Act was enacted under article 84 of the Constitution of Sri Lanka, which stipulates that bills that are inconsistent with the Constitution may be passed by a two-thirds majority in Parliament. The Supreme Court noted that, accordingly, the Act became law despite any inconsistency with the constitutional provisions (see *Weerawansa v. the Attorney General and others* (2000)).

[6] In August 2013, the Ministry of Law and Order was established to separate policing functions from military structures. The Special Rapporteur was assured that since March 2015, no individual had been held in detention by the military.

executive authorities. The judiciary is either excluded altogether, or has no ability to carry out an effective review of the detention or order the release of the detainee.

14. On 29 August 2011, 24 hours before the state of emergency expired, an emergency regulation that had been enacted during the state of emergency (which had been enacted under the Public Security Ordinance) was "absorbed" into the Prevention of Terrorism Act. Under the new regulation, the Minister of Defence was granted extensive powers to order arrest and detention and the Sri Lankan security forces were granted powers to carry out the arrests. In turn, this permitted the continued detention of individuals who had already been detained under this emergency regulation for 30 days, pending the issuance of detention orders under the Act or remand by a magistrate.[7] In practice, this often meant transfer from police to military authority or a change of place of detention and, crucially, a reset of the clocks so that administrative detention periods could start anew.

15. It is therefore unsurprising that during his visit to places of detention, the Special Rapporteur met a significant number of individuals detained under the Act whose length of detention ran into double figures in terms of years, and who had been detained in at least three different places of detention. From the official figures provided by the Office of the Attorney General on the persons currently charged with offences under the Act, it was apparent that out of 81 prisoners in the judicial phase of their pretrial detention, 70 had been in detention without trial for over 5 years and 12 had been in detention without trial for over 10 years. The Special Rapporteur was also informed that, at least until his visit,[8] the Attorney General had almost inevitably refused to grant consent to bail applications. As a result, individuals with various real or imputed links or association with the Liberation Tigers of Tamil Eelam have been detained for years without charge or trial, without any judicial review of their detention, and with almost no possibility of release.

16. Such lengthy administrative detention without any satisfactory judicial involvement is a clear violation of the prohibition of arbitrary deprivation of liberty and of the right to judicial review of the lawfulness of detention, both of which are non-derogable.[9] Outside a state of emergency,[10] the right of the detainee to be brought promptly before a judge applies without any exception to any individual arrested or detained on suspicion of criminal activity. As detention without judicial control increases the risk of torture and other ill-treatment in detention, delays should be as short as possible from the time of the arrest and the individual should personally appear before the judge.[11]

(c) Torture and ill-treatment under the Prevention of Terrorism Act

(i) Forced confessions

17. Critically, the rules concerning the admission of confessions are extremely broad under the Act. In contradistinction to the Evidence Ordinance of Sri Lanka, under the Prevention of Terrorism Act, the use of confessions obtained by certain officials is admissible evidence in court and as the sole basis for convictions. Such confessions can be made by any person charged with any offence under the Act, in custody or not, at any time, and made orally or in writing, in the course of an investigation or not (sect. 16). While

[7] Prevention of Terrorism (Detainees and Remandees) Regulations No. 4 of 2011.

[8] Approximate figures provided by the Office of the Attorney General show that in 2016, bail was granted in over 50 per cent of cases.

[9] Human Rights Committee, general comment No. 29 (2001) on derogations from provisions of the Covenant during a state of emergency, para. 16. See also general comment No. 35 (2014) on liberty and security of person, para. 66.

[10] Sri Lanka was under a state of emergency from: March 1971–February 1977; August 1981–January 1982; 30 July–30 August 1982; 20 October 1982–20 January 1983; 18 May 1983–11 January 1989; 20 June 1989–4 September 1994; 4 August 1998–4 July 2001; 5–6 November 2003; and 12 August 2005–30 August 2011. On 19 November 2015, Sri Lanka notified the Secretary-General of the United Nations of "the termination of all derogations previously notified under the International Covenant on Civil and Political Rights, pursuant to the lapse of the Emergency Regulations in August 2011".

[11] Human Rights Committee, general comment No. 35, paras. 32–34.

confessions caused by an "inducement, threat, or promise"[12] are not admissible, the burden is placed on the accused to prove that the confessions were obtained under such circumstances.

18. Many of the current and former detainees under the Act who were interviewed by the Special Rapporteur claimed that they had signed documents in a language that they did not understand, or were simply asked to put their signature at the bottom of a blank piece of paper, after having been tortured, sometimes in exchange for transfer out of police or security service custody.

19. The ability to convict a suspect on the basis of a confession, irrespective of the conditions in which the information was obtained, is a key contributing element to the pervasive use of torture and its entrenchment. In this regard, the inadmissibility of evidence obtained under torture, enshrined in article 15 of the Convention against Torture, is one of the most crucial safeguards against this form of abuse in the criminal justice system. It removes a prime incentive for torture and, as evidence obtained under torture is dismissed, it helps ensure that no innocent person is convicted.

20. In practice, however, the effective implementation of this key principle remains illusionary if the burden of proof that the confession was obtained by torture is placed on the suspect. Since torture almost always takes place behind closed doors, has no witnesses except its perpetrators, and deprives its victim of any independent forensic expertise to document evidence that it occurred, it is almost impossible for the suspect to prove that they have indeed been tortured. In addition, bringing a complaint of torture against his or her gaolers before the judges implies the risk of being further abused, which in itself is a disincentive to complain. Thus, for the safeguard against the admissibility of evidence obtained under torture to be effective, a shift of the burden of proof regarding torture allegations has to take place.[13] The Special Rapporteur notes that failure by the State to provide minimum procedural safeguards during detention and interrogation, or refusal by courts to address concerns raised relating to the use of torture and ill-treatment, combined with sole reliance on the confessions signed to convict the individual, lend legitimacy to allegations of torture and ill-treatment. The Committee against Torture has determined in this regard that the applicant is only required to demonstrate that his or her allegations of torture are well founded.[14] As a result, the burden of proof to ascertain whether or not statements invoked as evidence in any proceedings have been made as a result of torture shifts to the State.[15] A failure to verify that the confessions were not obtained through torture and then using such confessions in judicial proceedings despite the allegations amounts to a violation of article 15 of the Convention against Torture.[16]

(iii) Safeguards and prevention

21. The Special Rapporteur is encouraged that, under section 28 of the Human Rights Commission Act, the National Human Rights Commission now has unfettered access to all places of detention and is notified within 48 hours of an arrest or a transfer made under the Prevention of Terrorism Act. He regrets, however, that due to the high number of complaints and various administrative and logistical factors, the Commission is not always able to respond with the required timeliness that such complaints deserve. He also regrets that several past and current detainees informed him that they had never received a visit from the International Committee of the Red Cross during their lengthy periods of detention.

22. While the Special Rapporteur was informed that "most" detainees had been examined by a judicial medical officer, it is clear that, given the prevalence of torture under

[12] Section 24 of the Evidence Ordinance.

[13] A/HRC/13/39/Add.5, para. 98. See also A/71/298, para. 98.

[14] *G.K. v. Switzerland* (CAT/C/30/D/219/2002), para. 6.11. See also *P.E. v. France* (CAT/C/29/D/193/2001), para. 6.6.

[15] *G.K. v. Switzerland*, para. 6.10, with reference to *P.E. v. France*, para. 6.3.

[16] *Nyonzima v. Burundi* (CAT/C/53/D/514/2012), para. 8.7. See also African Commission on Human and Peoples' Rights, *Egyptian Initiative for Personal Rights and Interights v. Egypt*, communication No. 334/2006.

the Act, this mechanism has acted neither as a deterrent nor as an effective way to substantiate allegations of torture and ill-treatment.

23. Access to lawyers for individuals in detention under the Act is patchy and far from systematic. It became clear to the Special Rapporteur during his meetings with detainees that counsel had not been made available to detainees at every stage of the investigation, and that sometimes counsel had not been made available at all. Some detainees complained that the counsel provided to them through legal aid did not speak a language that they understood, while lawyers complained about the very lengthy administrative procedures to access individuals in detention, which was used by the authorities to transfer detainees before access was granted and required lawyers to start the procedures anew, wasting precious time and resources.

(iii) "Routine" and "systemic" use of torture and ill-treatment under the Prevention of Terrorism Act

24. The evidence collected by the Special Rapporteur points to the conclusion that the use of torture has been, and remains today, endemic and systematic for those arrested and detained on national security grounds under the Prevention of Terrorism Act. Following his visit to Sri Lanka in 2016, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment had concluded that the use of torture and ill-treatment to obtain a confession from detainees under the Prevention of Terrorism Act was routine practice. He observed that, in those cases, a causal link seemed to exist between the level of real or perceived threat to national security and the severity of the physical suffering inflicted (A/HRC/34/54/Add.2, paras. 22 and 31). A representative of the newly appointed and highly credible National Human Rights Commission emphasized that torture in custody was widespread, systemic and institutionalized, and its eradication formed a major priority in its work.

25. The Special Rapporteur was extremely concerned to learn that 80 per cent of individuals arrested under the Act in late 2016 had complained of torture and physical ill-treatment following their arrest, in cases that had been later dealt with under ordinary criminal law. The most senior judge responsible for terrorism cases in Colombo informed him that in over 90 per cent of the cases he had dealt with during the first half of 2017, he had been forced to exclude essential evidence because it had been obtained through the use or threat of force. Torture was so widespread that in the course of an official meeting, a minister referred to "torturers" within the police and in prisons. Following the Special Rapporteur's visit, allegations emerged that torture of at least 50 Tamils had taken place since the election of the current Government. The United Nations High Commissioner for Human Rights stated that while the United Nations was unable to confirm the allegations until it mounted an investigation, clearly the reports were horrifying and merited a much closer inspection from its part, especially if the acts had occurred in 2016 and 2017.[17]

26. During his interviews with current and former detainees under the Act, the Special Rapporteur heard distressing testimonies of very brutal and cruel methods of torture, including beatings with sticks, use of stress positions, asphyxiation using plastic bags drenched in kerosene, pulling out of fingernails, insertion of needles beneath the fingernails, use of various forms of water torture, suspension of individuals for several hours by their thumbs, and mutilation of genitals. In a number of instances brought to his attention, these allegations had either been supported by independent medical evidence, or accepted by the judiciary as the basis for excluding a confession at trial.

27. Given the serious human rights violations committed under the Prevention of Terrorism Act, the case for repealing and replacing it is unequivocal. The Minister for Law and Order informed the Special Rapporteur that steps were under way to avoid any new arrests under the Act, and to use the general criminal law wherever possible. This is to be welcomed, not least because under the general criminal law, confessions made to a police officer are inadmissible, precisely because of the risk that they may have been obtained by

[17] Paisley Dodds, "Dozens of men say Sri Lankan forces raped and tortured them", Associated Press, 8 November 2017.

torture. The Special Rapporteur is satisfied that there had been a steep decline in the use of the Act during the first half of 2017, but he was nonetheless made aware of new cases in the Northern Province, in which individuals had reportedly been arrested under that legislation. More than two years since the adoption of resolution 30/1, and despite the undertaking of the Government to the people of Sri Lanka and to the international community, the Act still has not been repealed or replaced.[18] It remains fully on the statute book, and steps to reduce its use in new cases provide no remedy to those currently languishing in appalling conditions, for years on end without trial. The Special Rapporteur's opinion is that a moratorium on the use of this Act must be immediately established, pending its rapid repeal.

(iv) Conditions of detention

28. The Special Rapporteur found the conditions in the high-security wing of the prison in Anuradhapura that he visited to be inhumane. The infrastructure was deficient and crumbling, there were no proper sleeping arrangements as inmates were forced to sleep on concrete floors, there was a clear lack of ventilation in extreme heat, and the toilet and shower facilities were unhygienic. Furthermore, he met with an inmate held in isolation who showed him a tin can that he was obliged to use in the absence of access to toilet facilities.

2. Policy and legal framework of the proposed counter-terrorism act of Sri Lanka

29. Prior to his visit to Sri Lanka, the Special Rapporteur had been provided with a copy of the policy and legal framework of the proposed counter-terrorism act of Sri Lanka, which had been approved by the Cabinet on 25 April 2017. Although not a bill in itself, the document provides a detailed framework for the proposed legislation to replace the Prevention of Terrorism Act. At the time of the visit, the draft framework was being prepared by the Legal Draftsman's Office to be turned into a bill. In terms of procedure, the Attorney General's certification that the bill is consistent with the Constitution and the international human rights and other obligations of Sri Lanka contracted under the treaties it has ratified will be required before it can be presented to Parliament.

30. The Special Rapporteur notes that the draft framework contains several significant improvements. Notably, the National Human Rights Commission is allowed unfettered access to individuals in detention and the Attorney General's right of veto over the grant of bail has been abolished. It contains an improved framework for administrative and pretrial detention, with greater scope for independent judicial review. However, there are a number of central flaws in the current draft framework that, if it was enacted, would guarantee the continued violation of the human rights of terrorism suspects.

(a) Evidence

31. One of the substantial weaknesses of the draft framework is a provision that maintains the admissibility of confessions made to a police officer while in custody. In a country with such a grave and widespread legacy of torture and ill-treatment in custody, the only way for counter-terrorism legislation to conform to international human rights standards in this regard would be to strictly prohibit the use of torture and confessions obtained through it. That is the position under the general law in Sri Lanka, for good reason, and it should certainly be the position under counter-terrorism legislation, where the risk of torture is greater. Additional safeguards should also be included, such as the presence of counsel during all interviews, and their systematic video recording, as a practical, effective technical safeguard against torture.

[18] In March 2017, the Human Rights Council adopted resolution 34/1, a "technical rollover" resolution to give more time to implement resolution 30/1. It was criticized by many because no additional conditions were placed on the Government of Sri Lanka (see International Crisis Group, "Sri Lanka's transition to nowhere", Asia Report No. 286, 16 May 2017).

(b) Definition of terrorism

32. The breadth of the definition of terrorism poses a real risk that the legislation, including the enhanced procedural powers that limit the rights of those falling foul of it, could be used in circumstances very far removed from acts of real terrorism. The Special Rapporteur is particularly concerned that in the draft framework, acts of terrorism are not confined to acts that threaten the life or physical integrity of individuals and are aimed at spreading fear or terror. This wide scope of application seems to echo the wide scope of the definition in the Prevention of Terrorism Act. Consequently, relatively minor offences could be construed as terrorist offences. The draft framework also contains a list of "aggravated criminal offences associated with terrorism", which cover acts that have little or no direct relation to terrorism whatsoever, including human trafficking, and offences that are prohibited under the Poisons, Opium and Dangerous Drugs Ordinance and the Immigrants and Emigrants Act. The Special Rapporteur is also concerned that the use of the expression "causing harm to the unity of Sri Lanka" (to be differentiated from "territorial integrity" and "sovereignty", also included in the draft) could be interpreted to include any non-violent act of protest or dissent against the State.

33. The draft framework also contains provisions that could seriously hinder freedom of expression, including the offence of instigating "by words either spoken or intended to be read or understood or by signs or by visible representations or otherwise ... communal disharmony" or "feelings of ill will" between different communities so as to affect the "unity" of Sri Lanka. This language is also too reminiscent of the language of the Prevention of Terrorism Act. It constitutes an overly broad provision that could be used to cover peaceful statements that are critical of the Government.[19] References to the broadly defined use of "confidential information" could be used against whistle-blowers or non-registered media.

34. The Special Rapporteur notes the existence of a "fundamental rights" provision, which allegedly aims to exclude from the definition of a terrorist act "any action taken in good faith in the lawful exercise of a fundamental right". However, any action that is carried out to fulfil the purpose element of the crime of terrorism cannot be considered as a "lawful exercise of a fundamental right". This in fact overrides the fundamental rights exclusion altogether, and renders its protection meaningless.

(c) Detention

35. In the light of the entrenched pattern of detention under the Prevention of Terrorism Act, the Special Rapporteur notes with concern that serious problems exist with a number of the provisions of the draft framework relating to the powers of arrest and detention. Detention orders, made by the police, would allow for individuals to be held in detention for up to six months without charge. The possibility of judicial or administrative review after two weeks of detention would be based on a request by the detainee, while the administrative review would be carried out by an executive body that would clearly lack independence. The only mandatory judicial review would be upon a request for extension of the order after eight weeks of detention, carried out on the basis of a confidential document, whose only outcome could be an extension of the order or a placement in remand custody. Furthermore, at the end of the period of detention under the order, release would not be automatic,[20] making remand detention more likely to be the rule. In turn, remand custody could last for a maximum of 12 months. Bail could no longer be vetoed by the Attorney General, but would be granted only if the police officer in charge requested it or at least did not object to it. This problem would be compounded by the fact that the High Court is expressly prohibited from granting bail unless there are "exceptional grounds" for doing so.

[19] This provision is very similar to section 2 (1) (h) of the Prevention of Terrorism Act, which was used to arrest and prosecute journalists and activists.

[20] The judicial authority must place the detainee in remand custody if the investigation is ongoing or if the Attorney General "has been or is to be requested to consider the institution of criminal proceedings".

36. The Special Rapporteur recalls that the prohibition of arbitrary detention is absolute.[21] Judicial review of administrative detention should occur within 48 hours, except in absolutely exceptional and fully justified circumstances. The proper exercise of judicial power must be carried out by an authority that is independent, objective and impartial in relation to the issues at hand, and the judicial authority must have the power to release the individual. Furthermore, individuals must be "promptly" informed of any charges against them, and the decision to keep a person in any form of detention should be subject to periodic re-evaluation by effective judicial review of the justification for continuing the detention, otherwise it may become arbitrary.

(d) Use of force

37. The military is granted a key role under the framework, although it is not specified that in the context of counter-terrorism, the military should be bound by the same rules as those applicable to law enforcement. Furthermore, the grounds on which force may be used are overly broad, and could cover situations where there is no imminent threat to life or serious injury, given the broad scope of the definition of terrorism offences under the draft framework. The use of force should be strictly limited, in accordance with the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

B. Impunity for human rights violations under the Prevention of Terrorism Act

38. The Prevention of Terrorism Act provides for immunity from prosecution "for any act or thing done in good faith or purported to be done in pursuance or supposed pursuance of any order made or direction given under this Act" (sect. 26). Such a broad immunity clause, clearly contrary to basic principles of international law, provides a good starting point for understanding the culture of impunity and the subsequent lack of accountability for human rights violations committed under this Act, in particular for violations of the right to life, and of the absolute prohibition of torture and ill-treatment and arbitrary detention.

39. Despite the shocking prevalence of the practice of torture in Sri Lanka, the Special Rapporteur notes the lack of effective investigations into such allegations. Indeed, he was informed that only 71 police officers had been sanctioned for torturing persons since available records began. During his visit, his official interlocutors repeatedly downplayed the importance of the phenomenon of torture, and when confronted with the large numbers of complaints and of vastly documented cases, they often simply explained that the police denied the allegations. All of this reflects a clear and disturbing unwillingness to recognize the problem, to take it seriously, to investigate allegations of torture and to punish perpetrators proportionately.

40. The Special Rapporteur welcomes the adoption by the Government of a "zero-tolerance policy" towards torture[22] and the appointment on 14 July 2016 of a committee to eradicate torture by the police. He also welcomes the Directive on Arrest and Detention under the Prevention of Terrorism Act, adopted on 18 May 2016 by the National Human Rights Commission, in which standards are set that must be respected by the police during arrest and detention to protect the human rights of those arrested and detained, particularly against torture and ill-treatment.[23] He further welcomes the important decision made by the

[21] Human Rights Committee, general comment No. 35, para. 66.

[22] In 2016, all police officers attended workshops on the issue of torture. They were made aware of this policy, and they were informed that the commission of any act of torture or ill-treatment would lead to military and court action.

[23] In the Directive, it is stated that the Prevention of Terrorism Act should be "construed narrowly and used in very specific circumstances, and should not be used to arrest persons for ordinary crimes". Safeguards include: the right to meet with counsel during interrogation, the right to be brought before a judicial medical officer within 48 hours of arrest, the right to inform family members, and the requirement that all places of detention be clearly gazetted and authorized.

President on 17 June 2017, to instruct the commanders of the armed forces and the police to abide by this Directive.

41. However, the Special Rapporteur is very concerned at the lack of a clear and effective procedure to complain about torture in custody. He notes that there is no formal procedure available to detainees in the prison system, and that there is no single clear channel for dealing with allegations of ill-treatment committed by the police. First, of the approximately 2,800 complaints received by the National Police Commission in 2016 and 2017, only 0.2 per cent were related to torture. The reasons for this extremely low percentage can, in part, be explained by the absence of any satisfactory outcome for the complainant. Indeed, the investigations, which are carried out by the police, obviously lack independence and can only result in disciplinary (as opposed to criminal) action against police officers. This is wholly insufficient in the light of the gravity of the crime of torture. Second, only High Courts have jurisdiction for complaints made under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Act No. 22 of 1994. Complaints can either be made directly to the Attorney General, or can be channelled through a ministerial-level mechanism adopted to monitor cases of torture.[24] Investigations are led by a Special Investigations Unit, under the supervision of the Inspector General of the Police. Unfortunately, this procedure gives the Attorney General discretionary power over indictment, which has resulted in only three indictments made since 2010. Third, fundamental rights applications can be made before the National Human Rights Commission[25] or directly to the Supreme Court.[26] When made to the National Human Rights Commission, which received 3,404 complaints of torture against the police in the period 2010–2016, complaints are solved either through mediation or conciliation, through a recommendation that the matter be appropriately prosecuted through the Attorney General, or referred to the Supreme Court. While fundamental rights applications are probably the most effective way of complaining about torture in detention, the Special Rapporteur is concerned that such procedures are not only lengthy and costly, but that the very short time frame within which they must be lodged — one month — can prove an insurmountable obstacle for a detainee.

42. Combating impunity is the most important objective of the Convention against Torture (A/HRC/13/39/Add.5, para. 134). Victims of torture have a right to a remedy and adequate reparation for the harm they have suffered. It is clear that where there is no possibility to complain, either because the mechanisms are ineffective or inexistent, or because official investigations are ineffective and slow to establish the facts, the right to an effective remedy and reparation remains illusory in practice, and impunity prevails. The Special Rapporteur thus calls on the Government to conduct prompt, thorough and effective investigations, securing all relevant evidence, wherever there is reasonable ground to believe that an act of torture has been committed, and ensure that any individual who alleges to have been subjected to torture has the right to complain and to have his or her case promptly and impartially examined by a competent and independent authority.

C. Dealing with past cases under the Prevention of Terrorism Act and the right to a fair trial

43. The Special Rapporteur is concerned that during his visit, he was unable to obtain consistent figures regarding the number of individuals held in detention under the Act. He estimates that, at the time of his visit, there were between 81 and 111 individuals still in detention, at various stages of the judicial process.[27] Given the very lengthy administrative detention that prevails under the Act that would in most cases amount to arbitrary detention, solving these past cases, and finding a fair outcome for those in detention through release or

[24] Ministers are made aware of cases through public sources, reports from the Inspectorate General of the Police command centre, and fundamental rights applications.

[25] See part II of the Human Rights Commission Act.

[26] See articles 17 and 126 of the Constitution of Sri Lanka.

[27] According to figures provided by the police and the Office of the Attorney General, as at 12 July 2017. Figures from other governmental departments ranged from 23 to 95 individuals.

conviction, with procedures that afford all guarantees of due process, should be an absolute priority of the Government.

44. The Attorney General informed the Special Rapporteur that his Office had spent two years reviewing the cases of all those in detention under the Act. Executive decisions had been made to consent to bail, to divert individuals into rehabilitation programmes or to reduce criminal charges, particularly where the individual had been in detention for longer than the maximum sentence of the offence. This initiative is to be welcomed, but it is insufficient in the light of the fact that some detainees have been in custody in appalling conditions for 12 years, on the basis of a confession that was likely obtained through the use of force, and the perpetrators have not been brought to justice.

45. During the visit, the Special Rapporteur heard the desperation and trauma of detainees who had undertaken hunger strikes in an attempt to persuade the Government to finally bring their cases to court. One detainee explained that the judicial phase of the procedure had been under way since 2010. A number of State interlocutors tried to suggest that the slow process of justice in the existing cases under the Act was primarily due to slow progress by the defence. The Special Rapporteur is satisfied that a more convincing and adequate explanation is the one given both by the Chief Justice and a senior official in the Office of the Attorney General, who acknowledged that the court and prosecution resources were under such strain that the situation had become unmanageable. A number of lawyers also informed the Special Rapporteur that no efforts had been made by the Government to increase the number of criminal courts.

46. The Special Rapporteur notes that two Special High Courts, in Colombo and Anuradhapura, were set up in January 2016 to deal exclusively with cases under the Act. Despite obvious efforts from the two judges responsible for these High Courts to prioritize and extradite terrorism cases, and to deal with them as fairly as possible under such a flawed piece of legislation, notably by excluding confessions not made before a magistrate in cases where those confessions had been the only evidence, the Courts appear to be underresourced and understaffed, given the number of individuals still at various stages of the judicial process. The Special Rapporteur is alarmed that in Colombo, the High Court judge informed him that in the short time he had been in this role, he had only been able to accept 1 out of 11 confessions as evidence during a trial (the sole confession that had been made before a magistrate), while in Anuradhapura, out of 14 cases, 12 had been based solely on unreliable confessions. This raises extremely serious concerns over the fairness of the trials that have already been concluded and the possibility of severe miscarriage of justice. The Special Rapporteur regrets that provisions of the Prevention of Terrorism Act that further encroach upon the right to a fair trial, including the rights of defence (sect. 18) and those relating to appeals (sect. 19), continue to be applied, and that application of credit for time spent in detention — which appears to be at the discretion of the judge in sentencing convicts under the Act — is not mandatory, given the length of time these individuals have already spent in detention.

47. In meetings with victims under the Act, their families and their lawyers, the Special Rapporteur's attention was drawn to the fact that while those most affected by the operation of the Act were Tamils, detentions and trials under the Act rarely occurred in Tamil majority areas. In addition to proceedings being conducted in an unfamiliar language, he was told of the fear felt by some Tamil lawyers of attending trials, of the view of many Tamils that trials took place in hostile environments, and of the general distress of families who were far away for very long periods of time and felt excluded from the process. Several lawyers had stressed the lack of impartiality and independence of the judges dealing with those cases, and had requested the transfer of those cases to majority Tamil areas, such as Jaffna or Vavuniya.

48. The Special Rapporteur is clear that the way in which the Act has been and continues to be implemented amounts to a flagrant denial of justice, and that all of those still detained under the Act should be provided with an effective judicial review of the legality of their detention, and either released or submitted to a fair trial with all guarantees of due process. Furthermore, those already convicted under the Act should have their case fully reviewed, so that they do not suffer in prison serving long sentences, following a flawed trial where the sole evidence was obtained under torture. As fundamental rights

applications do not lie against judicial decisions, the Special Rapporteur calls on the Government to establish a mechanism for reviewing the safety of all past convictions under the Act, particularly those in which a confession to the police was central evidence.

D. Transitional justice

49. The progress of the new counter-terrorism legislation, and the management of past cases under the Act, has been painfully slow, and this has, in turn, delayed the wider package of transitional justice measures that Sri Lanka committed to deliver in 2015. During his visit, the Special Rapporteur was given personal assurance by the Prime Minister that once the process of counter-terrorism reform had been completed, the Government would pass legislation paving the way for a truth and reconciliation commission to be established, and set up an office of the special prosecutor to bring criminal charges against those involved in the most serious atrocities committed on both sides of the conflict. These are, of course, steps that the Government had promised to the international community to deliver in full by the time of the Special Rapporteur's visit.

50. It is fair to say that there are some very slight indications of positive movement in this direction. During the Special Rapporteur's visit, the Chief of the Army made a public commitment to ensuring that members of the armed forces who had committed crimes would be brought to justice; a senior Naval Commander was arrested for his alleged involvement in the disappearance of 11 people during the closing stages of the conflict; and the Special Rapporteur was assured by the Attorney General that if and when criminal allegations against the military finally reached his Office, those found guilty would be prosecuted with the full force of the law. The Attorney General recognized that if Sri Lanka was to achieve lasting peace, its law enforcement institutions must gain the confidence of all sectors of society, including the Tamil and Muslim minorities. Unfortunately, following the Special Rapporteur's visit, the President sought to shield a former army general from a criminal complaint in which he had been accused of command responsibility for war crimes.[28]

51. This falls far short of the international commitment made by Sri Lanka to achieve a lasting and just solution to its underlying problems for the benefit of all of its communities; to establish a meaningful system of transitional justice, including the rights to truth, justice, reparation, and guarantees of non-recurrence, that is governed by the principles of equality and accountability; and to put in place essential and urgently needed reform of the security sector. It is indeed difficult to resist the conclusion that the inertia in implementing the reforms reflected in resolution 30/1 — including repealing the Prevention of Terrorism Act, adopting new human rights-compliant counter-terrorism legislation, solving past terrorism cases and ending the impunity that surrounds those cases — reflects the continuing influence of certain vested interests in the security sector, who are resistant to change, and above all, to accountability. The recent enactment of domestic legislation incorporating the International Convention for the Protection of All Persons from Enforced Disappearance, although belated, is to be welcomed. Its impact remains to be evaluated. Given the prominent role that the security sector continues to have, including in the drafting of the new counter-terrorism legislation, it is critical that all those within the military, intelligence and police establishment who are allegedly responsible for grave human rights violations, including torture under the Prevention of Terrorism Act, are identified and punished, and that the security sector is placed under full civilian control and oversight.

52. Sri Lanka must ensure accountability for any gross or serious violations of international human rights law and international humanitarian law, including those that take place in the context of countering terrorism. It should ensure that action is taken so that violations and abuses are prevented and not repeated, and it should promptly, thoroughly, independently and impartially investigate allegations of such violations and abuses, to

[28] President Maithripala Sirisena was reported as saying "I state very clearly that I will not allow anyone in the world to touch Jagath Jayasuriya or any other military chief or any war hero in this country". (Al Jazeera, "Sri Lanka leader to shield general from war crimes case", 3 September 2017.)

punish perpetrators and to ensure access to remedy and redress for victims. The slow pace of implementation of the three desperately needed mechanisms in accordance with resolution 30/1 (a commission for truth, justice, reconciliation and non-recurrence, an office of missing persons[29] and an office for reparations) sends the very clear message to victims that impunity and lack of accountability will continue to prevail, and will make "the exercise of universal jurisdiction even more necessary", as recently noted by the United Nations High Commissioner for Human Rights.[30]

E. Non-discrimination and stigmatization

53. The Special Rapporteur was informed of the important investment carried out by the Government to resettle Tamils and to further the economic development of the Northern Province, including the construction of 6,000 new houses, and a planned 50,000 in the next few years. He was repeatedly assured that there was no discrimination against the Tamils and that criminal law had been used against the Liberation Tigers of Tamil Eelam only. He was officially told that ill-treatment was a greater challenge in the south than in the north and east of Sri Lanka; and that there was disproportionate attention paid to the perceived negative treatment by the authorities of the Tamil population by Tamils themselves, the international community and civil society.

54. At the same time, the Special Rapporteur observed a pervasive and insidious form of stigmatization of the Tamil community. Tamils are severely underrepresented in all institutions, particularly in the security sector and the judiciary, despite the importance allegedly attributed to ensuring that all institutions adequately reflect the ethnic, linguistic and religious make-up of the State. The authorities explained that despite the various governmental programmes to reach out to Tamils, it was the Tamils that did not want to integrate into governmental institutions, notably because of the language barrier or their lack of trust in the Government. The Special Rapporteur is particularly concerned about the very large and imposing military presence in the north, which he witnessed himself in Vavuniya. While he understands that the military undertakes important reconstruction work in that part of the country, he is also conscious of the highly symbolic value of its presence. The pervasive lack of accountability for the war crimes that were perpetrated during the war, the climate of impunity that prevails within the security sector, the overwhelming economic weight of the military and its involvement in civilian activities, and the overwhelmingly Sinhalese majority within the military, all contribute to perpetuating the resentment and disenfranchisement felt by the Tamil community as a whole.

55. The lack of reaction from the Government to incidences of incitement to hate speech and racism, and attacks on minorities, including Muslim places of worship, in what is perceived by Tamils and Muslims as "Buddhist extremism", increases the deeply engrained sense of injustice felt by these minority communities, and strengthens Tamil national sentiments.[31] In this context, the Special Rapporteur recalls that it is not diversity within a society, but marginalization, discrimination and alienation of groups that increases a country's vulnerability to terrorism and violent extremism. During his visit, he heard that current and former detainees were afraid of being arrested again under the Prevention of Terrorism Act, that it was impossible for them to find employment, and that their families were, or were perceived to be, under surveillance. He was told that Father Elil Rajendram, who had led efforts to create a memorial for families who had lost loved ones during the armed conflict in the north, had been interrogated by the Terrorism Investigation Division, which was evidence that the Act was used as a continuous threat against the Tamils. Former detainees, and individuals who had undergone rehabilitation, allegedly still faced regular security checks and questioning. In Vavuniya, the Special Rapporteur was made aware of

[29] There has been some limited progress in the creation of the office on missing persons, with the enactment of a law, which still needs to be implemented.

[30] See www.unog.ch/unog/website/news_media.nsf/%28httpNewsByYear_en%29/D0BF0EA BE559E1ADC125819800457 20E?OpenDocument.

[31] See International Crisis Group, "Sri Lanka's transition to nowhere", Asia Report No. 286, 16 May 2017.

the threats made to a woman upon leaving a meeting with him. He was told about the surveillance of Tamil civil society, including women's groups, and about the fear of reporting alleged human rights violations and sexual violence to the authorities.

56. In addition to the trauma and desperation felt by the detainees themselves, the remaining cases of detention under the Prevention of Terrorism Act and the allegations that torture of Tamils has occurred in the two years prior to the Special Rapporteur's visit, are an increasing source of frustration among the Tamil community at large. Yet, in the course of his official meetings, the Special Rapporteur heard that the rationale for the exception to the general rule on confessions in the Act was that terrorists were not "normal" criminals, and that periods of pretrial detention that had lasted more than 10 years were justified because those people were guilty of "committing horrible crimes". Both statements reflect a commonly held view that suspects under the Act face an almost insurmountable credibility deficit, contrary to the principle of presumption of innocence. When viewed together with the figures that show that Tamils have been, and still are, overwhelmingly and disproportionately affected by the operation of the Act,[32] a picture emerges of the widespread institutional stigmatization of a single community.

F. Rehabilitation

57. A rehabilitation programme was set up in Sri Lanka in 2006 to deal with ex-combatants, and from the end of the conflict in 2009, it was used to deal with the large numbers of individuals who had various alleged links to the Liberation Tigers of Tamil Eelam and who, in the words of the Government, had "surrendered to the Government of Sri Lanka for safety and protection". A range of individuals with varying real or suspected links to the Liberation Tigers of Tamil Eelam were thus taken into custody and, following further investigation and an assessment of their risk level, placed either in detention under the Prevention of Terrorism Act, or in protective accommodation and rehabilitation centres for a maximum of two years. At the time of the Special Rapporteur's visit, 12,190 individuals had been through the rehabilitation programme,[33] with 10,000 between 2009 and 2013.

58. It is clear that unless there is a judicial decision to send an individual to such a programme, enrolment must be truly voluntary, otherwise it will amount to arbitrary detention. Where the sole alternative to rehabilitation is the flagrant denial of justice that is the Prevention of Terrorism Act, it can hardly be said that the individual is given a real choice. While the programme was presented as an amnesty in lieu of prosecution, in certain cases, it was neither, as some individuals went from administrative detention under the Act to rehabilitation and back, through "revolving doors" that could keep them in detention without any judicial involvement for years on end. Since 2013, the restrictions on liberty have not always amounted to detention, but the "judicial involvement" essentially consists of a decision made by the Attorney General, which is rubber-stamped by a judge. This does not amount to a proper judicial process, which is required in any restriction on the right to liberty. The Special Rapporteur is of the view that the continuing use of this programme is discriminatory and perpetuates resentment and stigmatization. It creates additional grievances within the Tamil community.

[32] Figures provided by the police department show that detention under the Act still overwhelmingly affects the Tamil population, with a ratio of over 3:1 Tamils to non-Tamils.

[33] Under Regulation No. 22 of the 2005 Emergency (Miscellaneous Provisions and Powers) Regulations, as amended by Emergency Regulation 1462/8 of 2006, "surendees" could be detained in rehabilitation centres for up to two years, without charge or trial, for the purpose of "rehabilitation". At the end of the conflict, many of these individuals voluntarily handed themselves in, others were allegedly coerced into doing so to avoid "severe consequences", while others were arrested, often with the assistance of informants. The one-year programme includes six months of mental and physical health rehabilitation and six months of vocational training.

IV. Conclusions and recommendations

A. Conclusions

59. **In 2015, Sri Lanka seemed to have turned a corner. New elections brought to power a coalition Government and with it the promise of change. In resolution 30/1, co-sponsored by Sri Lanka itself, the Council emphasized the importance of reconciliation, transitional justice, accountability and reform of the security sector, including the counter-terrorism framework. Yet, after a two-year extension granted to the Government in resolution 34/1, progress in achieving those key goals seemed to have ground to a virtual halt. None of the measures adopted by the time of the Special Rapporteur's visit to fulfil the transitional justice commitments made by Sri Lanka are adequate to ensure real progress.**

60. **The counter-terrorism apparatus is still tainted by the serious pattern of human rights violations that were systematically perpetrated under its authority. At the time of the Special Rapporteur's visit, the Prevention of Terrorism Act remained on the statute book. The new draft framework largely reflects the interests of the security sector and is far from being adequately grounded in international human rights law. Individuals are still held in detention under the Prevention of Terrorism Act, impunity is still the rule for those responsible for the routine and systemic use of torture, and countless individuals are the victims of gross miscarriages of justice resulting from the operation of the Act. The Tamil community remains stigmatized and disenfranchised, while the trust of other minority communities is being steadily eroded.**

61. **Sri Lanka must urgently implement the commitments made in line with resolution 30/1 to address the legacy of widespread and serious human rights violations that occurred in the context of the internal armed conflict in the country. The pervasive climate of impunity and the lack of accountability for serious human rights violations that occurred both during the conflict and in the aftermath requires immediate redress. The security sector is in need of urgent reform. The counter-terrorism legislation requires a complete overhaul to bring it into line with international human rights law. Failure to address these issues promptly and effectively will provide fertile ground for those intent on resorting to political violence, as real and perceived grievances are exploited by militants to garner support among vulnerable and alienated sections of the population. The price that future generations in Sri Lanka will have to pay for the continuation of this legal repression may prove as costly, or even costlier, than that which has so far confronted the present generation.**

B. Recommendations

62. **The Special Rapporteur recommends that the Government of Sri Lanka:**

(a) **Immediately establish a moratorium on the use of the Prevention of Terrorism Act for new arrests until it is off the statute book, and take urgent steps to repeal it;**

(b) **Ensure that the new counter-terrorism legislation is fully in line with international human rights law;**

(c) **Immediately provide for a prompt and effective judicial review of the legality of the detention of all those still detained under the Act;**

(d) **Submit all individuals charged under the Act to a fair trial with all guarantees of due process;**

(e) **Ensure that statements and confessions made by detainees under the Act have no probative value in proceedings against them;**

(f) **Establish a mechanism for reviewing all convictions under the Act in which evidence of a confession to the police was central to the prosecution case;**

(g) Establish an independent, effective and accessible mechanism to complain about torture and ill-treatment in all places of detention. Ensure that investigations into allegations of torture are launched ex officio and that complainants are not subject to reprisals;

(h) Ensure the availability of prompt, independent, adequate and consensual medical examinations at the time of arrest, upon entering a custodial or interview facility and upon each transfer;

(i) Ensure that all interviews with detainees are fully in line with the proposal made by the Special Rapporteur on torture for a universal protocol for non-coercive, ethically sound, evidence-based and empirically founded interviewing practices (see A/71/298) and ensure that all interviews are video recorded;

(j) Consider transferring those still in pretrial detention or those serving sentences under the Prevention of Terrorism Act to places of detention closer to their families, and the two Special High Courts dealing with cases under the Act to majority Tamil areas;

(k) Ensure that the right to habeas corpus is fully reflected in the future legislation, in line with the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court;

(l) Guarantee full and unimpeded access to a counsel who speaks a language understood by the person detained from the beginning of the deprivation of liberty and throughout all stages of criminal proceedings;

(m) Urgently ratify and implement the Optional Protocol to the Convention against Torture, and enable the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to carry out regular unannounced inspections of all places of detention;

(n) Ensure that the National Human Rights Commission receives adequate resources to effectively fulfil its mandate, including regular, effective and independent monitoring of all places of detention, the investigation of allegations of torture and ill-treatment, and the review of legislation;

(o) Publicly issue unequivocal instructions to all security forces to immediately end all forms of surveillance and harassment against human rights defenders and victims under the Prevention of Terrorism Act and their families;

(p) Guarantee that all cases of hate speech and attacks on minorities are fully investigated and prosecuted and the perpetrators punished, without discrimination;

(q) Ensure minimum standards of detention in accordance with the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules);

(r) Urgently reform all institutions of the security sector to place them under full civilian control and oversight. Develop a vetting process to ensure that all security personnel and public officials involved in human rights violations are removed from service;

(s) Ensure that the security sector, particularly the police, intelligence services and the military, adequately reflects the ethnic and linguistic make-up of the country;

(t) Demilitarize the Northern Province, as a symbolic gesture of reconciliation and trust-building;

(u) Implement the specific and detailed recommendations of the Special Rapporteur on torture (A/HRC/34/54/Add.2), the Special Rapporteur on minority issues (A/HRC/34/53/Add.3), the Special Rapporteur on the independence of judges and lawyers (A/HRC/35/31/Add.1) and the Working Group on Enforced or

Involuntary Disappearances (A/HRC/33/51/Add.2) following their missions to Sri Lanka, and those of the Committee against Torture (CAT/C/LKA/CO/5);

(v) Implement in full all the commitments made by Sri Lanka that are reflected in resolution 30/1, including by urgently putting into operation the office of missing persons.